



COMMONWEALTH OF AUSTRALIA

SENATE

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CORRECTIONS

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Thursday, 5 July 2018

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BY AUTHORITY OF THE SENATE

PROOF

Excerpts dealing with charges against Bernard Collaery and Witness K

Senator McKIM (Tasmania) (13:49): This is what we expected would happen. When the government has had enough and when the government's not able to answer quite reasonable questions on legislation like this, they simply crack the sads, have a bit of a sook, and sit there and don't answer questions. It's contemptuous of the Senate; it's contemptuous of our democracy. Minister Seselja can sit there and have a sulk for as long as he likes, but there are plenty of Greens to keep this debate going in this place, and we intend to scrutinise this legislation to the greatest of our capacity.

I've just come from a press conference with Bernard Collaery, who's been charged with conspiracy. Bernard Collaery, remember, is the lawyer who represents Witness K, the person who first revealed that the Australian government had bugged the government of Timor-Leste in an attempt to defraud one of our very close neighbours of their rightful revenue flows from the oil and gas fields in the Timor Sea. He's now been charged with conspiracy. And it's hard to escape the conclusion that those charges are politically motivated.

The reason I raise that in this debate is to support the contention that Australia is becoming a police state, a surveillance state and an authoritarian state. We've got social media companies scraping data off our mobile phones without permission and the government is doing nothing about it. We've got the government rolling along on its legislation to deny fundamental rights and liberties in this country that we used to sacrifice Australian lives to defend. In fact, relatives of mine have lost their lives defending those. Minister, if you think I'm going to let my relatives' sacrifice be in vain you've got another thing coming! So please show some respect for this parliament and answer the questions that you're asked.

I want to ask the question about the Tasmanian anti-protest legislation as well, parts of which were recently found to be unconstitutional by the High Court. Bless you, Bob Brown! Bob Brown was a distinguished senator and Leader of the Australian Greens for so long. He was one of the founders of the Australian Greens and, in fact, one of the founders of the global Greens movement that all of us who represent the Greens in this place are so proud to be part of. Bob was arrested at Lapoinya—a logging coop which I myself have visited, I might add. It's in this beautiful little patch of bushland in the north-west of Tassie. It's something that meant so much to the spirit of that local community. Then, of course, the Tasmanian government thought it was only worth something in dollar terms because, of course, they're Liberals. They're Tories, so they only understand value when there's a dollar sign in front of it. They decided they wanted to log it. Bob Brown got arrested there. I've actually lost count of the amount of times Bob's been arrested. I reckon he's pretty close to double figures, if he's not there already, through his activist and parliamentary career. He was arrested under some of the most draconian legislation that I saw in my time in the Tasmanian parliament.

By the way, this one trumps it hands down. If you want an assessment of where this sits—I've been in parliaments for about 16 years and this one's in the top three most draconian and frightening pieces of legislation that I've ever dealt with in my time in parliaments. And I've seen a few corrupt pieces of legislation—like the Tasmanian Pulp Mill Assessment Act, which was based on corrupt relationships between the Tasmanian government and Gunns Limited. And we're not missing Gunns Limited, by the way, down in Tassie. Those of us who care about the place are very happy to see the back of that company and convicted insider trader John Gay, who was their CEO and chair for so long.

National Security

Senator McKIM (Tasmania) (14:15): This question is to the Minister representing the Attorney-General in the Senate. It relates to the filing of criminal charges by Ms Sarah McNaughton SC, the Commonwealth DPP—

Senator Ian Macdonald interjecting—

The PRESIDENT: Order, Senator Macdonald! Please continue, Senator McKim.

Senator McKIM: against distinguished lawyer Bernard Collaery and his client, Witness K, an unnamed officer of the Australian Secret Intelligence Service, for alleged breaches of article 39 of the Intelligence Services Act. Did any member of the Australian government or their staff have any prior knowledge that Ms McNaughton was going to file these charges and, if so, what was the nature of that knowledge?

Senator FIFIELD (Victoria—Minister for Communications, Minister for the Arts and Deputy Leader of the Government in the Senate) (14:16): Thank you, Senator McKim. I don't have knowledge of the matters that you're raising, so I'll take that on notice.

The PRESIDENT: Senator McKim, a supplementary question.

Senator McKIM (Tasmania) (14:16): I hope that includes a commitment to return to the chamber as soon as possible with a response. Minister, the previous A-G, Senator Brandis, threatened Mr Collaery with prosecution right here in the Senate 4½ years ago. Last month the Joint Standing Committee on Treaties finally held public hearings on a new Timor Sea treaty, and, immediately afterwards, Ms McNaughton filed charges. Are those two events linked?

Senator FIFIELD (Victoria—Minister for Communications, Minister for the Arts and Deputy Leader of the Government in the Senate) (14:16): Senator McKim, as with the first question, I will endeavour to come back to the chamber with a response to you at the earliest opportunity.

The PRESIDENT: Senator McKim, a final supplementary question.

Senator McKIM (Tasmania) (14:17): Minister, prosecutions of this type can only be instituted by, or with the consent of, the Attorney-General. Please provide details of whether the Attorney-General instituted these charges or consented to them. Please provide details of the date on which either of those events occurred. Can you assure the Senate that these criminal proceedings against Mr Collaery are not politically motivated? (*Time expired*)

Senator FIFIELD (Victoria—Minister for Communications, Minister for the Arts and Deputy Leader of the Government in the Senate) (14:17): Senator McKim, I will help you to the extent I'm able to.

National Security

Senator McKIM (Tasmania) (15:40): I move:

That the Senate take note of the answer given by the Minister representing the Attorney-General (Senator Fifield) to a question without notice asked by Senator McKim today relating to national security.

Earlier today in a press conference I stressed the need for transparency in our justice system. I said that justice must not only be done, it must also be seen to be done. That press conference was with distinguished lawyer Mr Bernard Collaery and some of my parliamentary colleagues.

Mr Collaery, a distinguished lawyer and former Attorney-General of the ACT, has been issued with criminal charges by Ms Sarah McNaughton SC, the Commonwealth Director of Public Prosecutions. Also charged is Mr Collaery's client, known only as Witness K—a former officer of the Australian Secret Intelligence Service; a person who revealed the bastardry of what Australia did to Timor-Leste in 2004. Their first appearance will be at the ACT Magistrates Court on 25 July, where it's expected that the DPP will try to have the entire prosecution conducted in secret to prevent the media from scrutinising it. This is unacceptable. I encourage the media to apply for a public hearing, and I hope they do. ABC journalists Emma Alberici, Peter Lloyd, Conor Duffy and Marian Wilkinson and former producer Peter Cronau are named in the prosecution documents. It's abundantly curious that other media organisations and their journalists are not named. I wonder: is the prosecution trying to protect certain media organisations that might be sympathetic to the government? It also seems curious to me that previous Attorney-General Senator Brandis got up in this place, in the Senate, 4½ years ago and threatened Mr Collaery with prosecution.

Last month the Joint Standing Committee on Treaties finally held public hearings on a new Timor Sea treaty, and immediately afterwards Ms McNaughton, the DPP and former counsel to the trade union royal commission, filed charges. Any prosecution of this nature can only be instituted by or with the consent of the Attorney-General. The Australian public needs a firm assurance from government that these criminal proceedings are not politically motivated.

Minister Fifield's refusal to answer the questions I asked today is a disgraceful cop-out. And his refusal to deny that these charges were politically motivated when I gave him every opportunity to do so supports the obvious conclusion that, in fact, they are. Let me remind the Senate that successive governments have pursued and harassed Mr Collaery and Witness K since 2013. Governments denied a passport to Witness K, although the Director-General of ASIO has said that ASIO has no concerns about Witness K being allowed to travel overseas. Witness K has gone to the Administrative Appeals Tribunal to seek to have that decision overturned, and my understanding was a decision was imminent in that case, but these criminal proceedings, I understand, have led to a staying of that decision. Maybe that's the reason for the timing of these charges being laid.

Ms McNaughton is handling the case through her organised crime and counterterrorism unit—adding insult to injury. Are we to understand from that decision that Witness K and Mr Collaery are to be treated as though they are potential terrorists? I mean, give me a break! The Howard government ordered ASIS to spy on Timor-Leste's cabinet officers as part of a deliberate campaign by that government to defraud Timor-Leste and to steal that country's oil and natural gas, and to steal the revenues that would have flowed from the oil and natural gas rightly and properly to Timor-Leste. This was a criminal action by the Howard government. The way it and successive governments have reacted since shows the level of embarrassment that has been caused by Australia's criminality being exposed.

This latest prosecution—the charges laid against Mr Collaery and Witness K—continues the disgraceful way that this matter has been handled by successive Australian governments. Minister Fifield can't use these charges and the resultant legal proceedings as a veil to continue to hide under. He's got some serious questions to answer, and there is no way that responding to my questions about whether or not these charges are politically motivated and how the Attorney-General either instituted these charges or gave consent for these charges to be laid could compromise justice in any way. Let the truth out.

Question agreed to.

I then draw your attention to paragraph 6.154 of the PJCIS report where the committee refers to the Commonwealth DPP and Attorney-General's discretion not to prosecute as the relevant safeguard. Minister, I want to put to you that providing the Attorney-General with a discretion not to prosecute does not constitute a safeguard. Certainly that provision of a discretion to the Attorney-General not to prosecute is nowhere near as strong as a legislated safeguard would be. Are you suggesting that it's the government's view that providing that discretion to the DPP and the Attorney-General is enough of a safeguard here to protect media freedom in Australia? And, remember, I ask you in the context of the revelations today that, in fact, both the DPP and the Attorney-General have signed off on prosecuting Mr Bernard Collaery and Witness K for conspiracy.

Senator SESELJA (Australian Capital Territory—Assistant Minister for Science, Jobs and Innovation) (17:56): Just very briefly, we are going over the same ground. I know you've said it to 91.1(2) but I'll make it very clear that you are seeking to prosecute the same ground. I'm not going to answer those questions anymore, because there appears to be an attempt now to filibuster.

Opposition senators interjecting—

Senator SESELJA: I've gone through each of those elements a number of times. In relation to (2), the same applies. Each of those elements of the offence has to exist in order for an offence to be committed—the person deals with the information et cetera. All of those elements need to be there in order for a prosecution to potentially take place.

Senator RHIANNON (New South Wales) (17:57): We've come to one of the most serious aspects of the legislation before us, where people can be jailed for the rest of their life. For people who are listening to this or reading it at some stage, it's probably worth them understanding what is happening. The minister hasn't been that particularly cooperative, but we have got onto a new section and he was being half reasonable and starting to answer some questions. But a senior minister to Minister Seselja, Minister Birmingham, came in and they had a talk, and I can only assume that he said: 'Start curtailing your answers. You don't have to get up and reply to this; just sit there'—because that's what's now happening. We have got on to a section that has been so incredibly criticised in this country—by religious people, by legal experts, by charities, by university academics, by legal academics and by constitutional experts. It's unbelievable! It's like being back in the Cold War! They just sit there because they've got the numbers—because Labor delivered them. This minister was answering a few questions but now he's decided to bunker down. Why has he bunkered down? I would have to conclude that he's been given advice. This is really serious. It is no way for the Senate to be used—or abused, because that's what you're now doing.

People can now be captured by these laws. My colleague Senator Nick McKim has said—as have many others; I acknowledge that—that it has a 'chilling effect'. That 'chilling effect' means that people will think, 'I've got to be really careful about what I do'; 'Maybe I shouldn't write that article'; or, 'Maybe I shouldn't go and give that speech to that group of people who are concerned about the direction of Australian foreign policy or the direction of what's happening to our lack of interest in overseas aid and how it's misconstrued.' Look at the rubbish on the front page of *The Daily Telegraph* today. That chilling effect means that people back off from having an active and open engagement with public life. That is what this legislation will do. Maybe not many people will go to jail, but the government will have achieved what they're trying to do here: advance corporate interests and stifle civil society. The criticism that the government sometimes cops will be reduced, but so will the very rich fabric of what it means to live in a truly democratic society.

It is really alarming sitting in this senate tonight, 28 June. I think we should get it in the *Hansard*. There are three Labor people here. There are three coalition people here. There are three Greens here. There is one Centre Alliance here. I know people are busy—I'm often not here myself—but, seriously, what the coalition is getting away with is scandalous. What Labor's engaged in, what they've signed off on, will be remembered. We are talking about people going to jail for the rest of their lives, and a minister won't even get up and speak about it—disgraceful.

Senator McKIM (Tasmania) (18:01): I can only concur with the views expressed by Senator Rhiannon. I want people to understand that this is the only opportunity. The committee stage of this legislation is the only opportunity that this Senate has to scrutinise the 280 amendments across the two separate pieces of legislation that are before us this afternoon that the government and Labor have agreed on. The reason for that is that the coalition and Labor refused to support a Greens attempt to refer these pieces of legislation, plus the 280 amendments, to an inquiry by the Legal and Constitutional Affairs Committee.

Now, it's true that the bills as originally drafted, sloppy and rank with overreach, were examined at a parliamentary committee, the Joint Standing Committee on Intelligence and Security, but, of course, that's a closed shop between the coalition and Labor. The crossbench is frozen out of that. Having said that, the PJCIS

process did not provide an opportunity for the Senate to interrogate the 280 different amendments across the two pieces of legislation that we're debating this evening.

What we've got, as Senator Rhiannon quite rightly points out, are provisions that will have a chilling effect on our democracy, on freedom of speech, on press freedom and on media freedom in this country. We have a government refusing to allow for proper scrutiny, and being backed to the hilt by the Labor Party in refusing to allow for that proper scrutiny. The chilling effect is important here, because journalists will need to regularly ask themselves whether a story that they intend to write or publish might fall foul of the provisions in this legislation. When they're facing life imprisonment if they get it wrong—or at least the potential for life imprisonment if they get it wrong—it would be entirely understandable if they decided to err on the side of caution. That is exactly what this government is trying to do. I have no doubt that that is the intent of the relevant ministers who have oversight of this legislation. The cabinet, who presumably all supported and certainly will all support this legislation when it's voted on in this place, have the intent to significantly curtail the media's capacity to hold the government to account and report on stories that are embarrassing to the government. Of course, the Labor Party knows that it will be in government again one day and that, when it's in government, it will benefit from this chilling denial of press freedom.

I agree with Senator Rhiannon. Here we are, it's ticking into the evening and almost no-one's in the chamber. The minister's not answering questions on legislation that, in some parts, has the capacity to impose sentences of life imprisonment on people who are found to have contravened the incredibly broad provisions of this legislation. It's massive overreach, and it continues the blind lock step of the coalition and Labor marching this country down the road to authoritarianism. I was at Bernard Collaery's press conference today. He was asked whether he thought Australia was a police state. He didn't hesitate; he said yes. And he's right. We're a surveillance state. We're a police state. And we're being marched down the road towards authoritarianism. More than 200 pieces of legislation that erode fundamental rights, freedoms and liberties in this country have passed through state and territory parliaments in the last 20 years, and that's been done, in zombie lock step, by the Labor Party and coalition parties.

I move Australian Greens amendment (1) on sheet 8480:

(1) Page 3 (after line 11), after clause 3, insert:

4 Sunset provision

This Act is repealed at the start of the day 3 years after the day this Act receives the Royal Assent.

[sunset provision]

The CHAIR: I remind senators that we have split these two bills, so we are dealing with amendment (1) on sheet 8480, which is an amendment to the espionage and foreign interference bill. The question is that the amendment, as moved by Senator McKim, be agreed to.

The committee divided. [18:12]

(The Chair—Senator Lines)

Ayes14
Noes34
Majority.....20

AYES

Bartlett, AJJ
Griff, S
Hinch, D
McKim, NJ
Rhiannon, L
Siewert, R (teller)
Storer, TR

Di Natale, R
Hanson-Young, SC
Leyonhjelm, DE
Patrick, RL
Rice, J
Steele-John, J
Whish-Wilson, PS

NOES

Anning, F
Birmingham, SJ
Bushby, DC
Canavan, MJ
Colbeck, R
Fierravanti-Wells, C
Georgiou, P
Hanson, P
Ketter, CR

Bilyk, CL
Brockman, S
Cameron, DN
Chisholm, A
Duniam, J
Gallacher, AM
Gichuhi, LM
Hume, J
Kitching, K

NOES

Lines, S
 Martin, S.L
 McCarthy, M
 O'Neill, DM
 Ruston, A
 Smith, DA
 Sterle, G
 Urquhart, AE (teller)

Marshall, GM
 McAllister, J
 Molan, AJ
 Paterson, J
 Seselja, Z
 Smith, DPB
 Stoker, AJ
 Watt, M

Question negatived.

Senator McKIM (Tasmania) (18:14): Chair, I do appreciate your courtesy to me earlier. That was obviously an amendment that would have inserted a sunset clause into this legislation. Having said that, the Greens oppose schedule 1, item 8, on sheet 8485 in the following terms:

(1) Schedule 1, item 8, page 11 (lines 3 to 28), sections 82.5 and 82.6 of the Criminal Code **to be opposed**.

The CHAIR: The question is that sections 82.5 and 82.6, in item 8 of schedule 1, stand as printed.

The committee divided. [18:20]

(The Chair—Senator Lines)

Ayes38
 Noes10
 Majority.....28

AYES

Anning, F
 Birmingham, SJ
 Bushby, DC
 Canavan, MJ
 Colbeck, R
 Fierravanti-Wells, C
 Georgiou, P
 Griff, S
 Hume, J
 Kitching, K
 Marshall, GM
 McAllister, J
 Molan, AJ
 O'Sullivan, B
 Patrick, RL
 Seselja, Z
 Smith, DPB (teller)
 Stoker, AJ
 Urquhart, AE

Bilyk, CL
 Brockman, S
 Cameron, DN
 Chisholm, A
 Duniam, J
 Gallacher, AM
 Gichuhi, LM
 Hinch, D
 Ketter, CR
 Lines, S
 Martin, S.L
 McCarthy, M
 O'Neill, DM
 Paterson, J
 Ruston, A
 Smith, DA
 Sterle, G
 Storer, TR
 Watt, M

NOES

Bartlett, AJJ
 Hanson-Young, SC
 McKim, NJ
 Rice, J
 Steele-John, J

Di Natale, R
 Leyonhjelm, DE
 Rhiannon, L
 Siewert, R (teller)
 Whish-Wilson, PS