Broadly speaking, the Bill falls into two parts: one dealing with certain policing measures presumably intended to counter certain violent crimes, and the other, a very substantial re-working of law under the head of 'sedition'.

The policing measures may or may not be effective, and could possibly, like any severe police action, be counter-productive. I leave this possibility, and also a discussion of the constitutional and legal aspects of this Bill to more qualified people, confining myself to just two of the most serious issues.

1. The preventative detention orders are wrapped up in an extraordinary enforced secrecy, whereby almost no-one is allowed to know of the detention, (see Section105.41). One presumes the rationale is to conceal from co-conspirators that one of the group has been seized. But an efficient terrorist cell will almost immediately know if one of their members has disappeared; they will have arranged various contact procedures to monitor such a possibility.

On the other hand, not only do the police deprive themselves of the assistance of the public in coming forward with information about the detainee, they also open themselves to the errors and abuses that would inevitably occur. Imagine the consternation of friends, neighbours, relatives and workmates when someone vanishes for no reason.

We have the recent examples of DIMIA's 'catastrophes' to show how the lack of independent oversight and review results in gross abuses to ordinary citizens. Unfortunately, the Ombudsman was no help to those who suffered under DIMIA's regime.
In short, Section 105.41 would be of little policing value, and would prevent the speedy uncovering of errors and abuses.
The one great consequence of secrecy, however, is that it protects the Executive from scrutiny and accountability.

2. In passing, I mention a possible consequence of the Control Order provisions set out in Section 104.5.
Who is responsible for the controlled person while the order is in force? Supposing the person is under house arrest, suffers a medical emergency and is unable to seek medical attention by virtue of his arrest, and, in an extreme case, dies. There are no provisions for sudden, necessary departures from the control order. In prison, the situation is clear; the State has a duty of care, but would the State also be responsible in such a case?

3. I now turn to the second major part of the Bill dealing with sedition.
'Sedition' defined in the O.E.D. as 'incitement to rebellion against constituted authority,' is not action, but advocacy, and is defined in the Bill as 'urges another person to.' Sedition is not rebellion, but the incitement to rebellion.

The question arises as to what this has to do with terrorism --- why does it appear in a policing Bill? The connection is only very slight, occurring only insofar as incitement to

rebellion just may possibly involve rebellion employing tactics of the particular kind categorised as terrorism. The classic tale of the Army seizing the Presidential Palace, the central radio and TV station, and putting the former Government figures under arrest, does not necessarily involve bombs on trains.

Whether or not we require any offence of sedition at all is a matter for mature and measured debate; there is no urgency of a kind that may require some police measure. The matter should be dropped for the present. But if not, the following remarks are pertinent.

The offence of Sedition expands the existing offence of 'Treachery' (Crimes Act 1914 Section 24AA) and of 'Treason' (Criminal Code 1995 Section 80.1(1)), both of which parts of the legislation are arguably already too broad (such as 24AA(1)(b)(ii))

The proposed Sections 80.2(5), (7), (8) are particularly troubling. Consider a person who urged Iraqi citizens to resist the USA-UK-AUS armed invasion of that country on the grounds, perhaps, that it was likely to be a disaster, or that it was illegal under international law (which is certainly an arguable position, and one held by some very knowledgeable and responsible people). Such a person has to establish 'good faith' to escape prosecution under Section 80.2(8).

Ultimately, attempts to control speech are futile unless one moves to the full autocratic model of simply banning speech with which the Government disagrees, which can be achieved either through a corrupt judiciary or through a police state measure such as -- preventative detention. Because, legislatively, to do less, is to permit those with a little shrewdness to say one thing and mean another, as politicians understand very well. For example, in the case of the joint invasion of Iraq, some agitator might say:

"All patriots here, as I'm sure you all are, would surely have resisted a Japanese invasion of this country in 1942, and some of you, principled and self-sacrificing above the norm, would have taken up arms, would have blown up bridges and enemy guard posts, exploded power lines, ports and the instruments of occupation control. National heroes, to be honoured every year at Anzac ceremonies!
But wait. Iraqi citizens facing our own gallant ADF must, I repeat, absolutely must, on the approach of Australian soldiers in Iraq, quietly disarm, and kiss their boots."

The problem with declaring this speech seditious, is that one must say that the meaning is divorced from the words. And that way legal madness lies.

For a further example of the difficulty of spelling out precisely the speech the Bill intends to curtail, consider the case of a person who urges another person to urge another person to rebellion. That is, A will legally urge B to urge C to rebellion. B's urging is covered by the Bill, but not A's. Will we see an Anti-Terrorism Bill 2006 with new provisions for this case to show how much the Government is doing to protect its citizens?

And are people such sheep as to follow any petty demagoguery?

The best defence against hatred, contempt or advocacy of violence is a reasoned response. The danger of suppressing dissent or foolish or intemperate statements is too great in the proposed Bill. The defence of 'good faith' offered requires an evidential burden on the defendant. 'Good faith' is not defined, neither here nor in the Crimes Act 1914. At the very least it should be for the prosecution to establish 'bad faith' or 'not in good faith,' rather than the other way round. Remember too, the inequality of legal resources available to the Commonwealth and the individual.
In my judgement, the whole project of criminalising sedition is ill-advised: free speech is endangered while shrewd enemies will slip through any legislative net.

As Dr B. Saul writes (The Age 19/10/05):

"Criminalising indirect or vague expressions of support for terrorism unjustifiably interferes in legitimate free speech and only drives such beliefs underground. Rather than exposing them to debate, which corrects and ventilates the poison of bad ideas, criminalisation aggravates underlying grievances. While every society has the highest public interest in protecting itself from violence, no society should criminalise speech that it finds distasteful or inflammatory when such speech is remote from the actual practice of terrorism by others.
A robust and mature democracy should be expected to absorb unpalatable ideas without prosecuting them."

Robert Fox