Australian government prepares to bolster terrorism laws

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Prime Minister Julia Gillard has announced a long-delayed review of the police state-style "counter-terrorism" laws that federal and state governments in Australia rammed through in 2005 after the previous federal Liberal government declared an "urgent" security situation. The terms of reference for the review, and the personnel selected to conduct it, indicate that its purpose is to strengthen, not limit, the measures.

The 2005 legislation extended the terrorism laws that were imposed in the wake of the 9/11 terrorist attacks in the United States. Those laws already defined terrorism in sweeping terms that could cover many forms of political dissent, expanded the surveillance powers of the security forces, and eroded fundamental legal principles, such as habeas corpus (no detention without trial) and the presumption of innocence.

Further unprecedented measures were introduced in the 2005 amendments, such as control orders, preventative detention and police stop, question and search powers. One crucial amendment altered the wording of criminal offences from "the" to "a" terrorist act, thus permitting convictions without any evidence of a specific terrorist plot, let alone any actual terrorist attack.

The government's review was supposed to be conducted in 2010, five years after these provisions were adopted. It will now report to the Council of Australian Governments next year. Gillard set the tone for the review in her announcement, asserting that terrorism was an "ever-present threat". The review, she continued, would "ensure that our laws remain necessary and provide effective powers for our police and security agencies."

Previous reviews of the anti-terror laws conducted by the Labor government since it took office in 2007 have retained the police powers intact, while boosting key aspects and broadening their scope beyond "terrorism" to deal with anticipated political and social unrest (see: "Australian intelligence agencies prepare for political upheaval").

The latest review is designed to serve a similar function. Its terms of reference focus on whether the laws are "effective against terrorism—that is, they provide law enforcement, intelligence and security agencies with adequate tools to prevent, detect and respond to acts of terrorism." To provide a fig leaf of concern for civil liberties, the panel is meant to also examine whether the laws "contain appropriate safeguards against abuse." The six-person panel, headed by retired New South Wales Supreme Court judge Anthony Whealy, consists of judges, police commanders and prosecutors.

The day after Gillard's August 9 announcement, the High Court, Australia's supreme court, unanimously handed down a decision that underscores how far the laws threaten freedom of expression.

The High Court overturned a successful appeal by Belal Khazaal, a former Qantas worker, against his conviction for "making a document connected with a terrorist act." Khazaal, who had been free on bail since winning his appeal in the NSW Supreme Court last year, was sent back to prison to serve a 12-year sentence.

In September 2003, Khazaal posted on a readily-accessible jihadist web site a compilation of previously published documents that offered support for an Islamic fundamentalist "holy war". The material was not posted in any clandestine manner, as would be required for a terrorist plot, and its contents were compiled from publicly-available sources. Khazaal's electronic book included praise for the 9/11 terrorist attacks, lists of

potential assassination targets, including US President George W. Bush, and advice for would-be assassins, from organising transport to checking bomb wiring.

Nevertheless, there was no connection to any terrorist act or plot. Nor was evidence ever produced suggesting that an assassination was attempted as a result of anyone reading the material. Moreover, after the Australian Security Intelligence Organisation (ASIO) and the police raised objections to the document with Khazaal in May 2004, he removed it from the Internet. Two months later, however, he was arrested and charged, in the lead-up to a federal election, when the then Howard Liberal government sought to stir fresh fears in the minds of voters.

Khazaal's document reflected the deeply reactionary perspective of Al Qaeda, which justifies the mass murder of innocent people on the basis of religious fundamentalism. His prosecution in the Australian courts, however, has set a definite precedent for the criminalisation of political ideas. Once the capitalist state claims the authority to outlaw a particular point of view, no matter how abhorrent, this can be used against any other dissent, above all against left-wing and socialist movements within the working class.

In Khazaal's original trial, the jury was unable to reach a verdict on an additional charge against Khazaal—that of "inciting a terrorist act". The jury members evidently doubted that he had any intention of encouraging an actual terrorist attack. But he was convicted on the remaining charge of "making a document connected with terrorism," for which the legislation requires no such intent. The law imposes an "evidentiary burden" on defendants of proving lack of intention—effectively reversing the centuries-old "mens rea" principle that the prosecution must prove a guilty mind.

Last year, the NSW Supreme Court, by a two-to-one majority, decided that Khazaal had satisfied this "evidentiary burden", by raising the reasonable possibility that in publishing the manuscript he had no intention of facilitating a terrorist act, because he was functioning as a scholar or journalist who researched and published material relating to Islam.

The High Court, however, rejected this. The judges revealed the far-reaching logic of the legislation's wording, "making a document connected with a terrorist act". They emphasised that in establishing this "connection", the prosecution did not need to identify a specific terrorist act. Chief Justice Robert French said the courts had to respect "the clear intention of Parliament to create offences where an offender has not decided precisely what he or she intends to do."

The 2005 amendment from "the" to "a" terrorist act, did not apply to Khazaal, because he was charged earlier, in 2004, but the judges declared that the change had only clarified what parliament's intention had been all along. Significantly, the judges rejected Khazaal's submissions that (1) the mere fact that a document makes reference to terrorist acts does not create the required "connection" to a terrorist act, (2) the words "connected with" require a terrorist act to be contemplated by somebody, and (3) a document will become "connected" only where the accused person actually contemplated its use to assist a terrorist act.

The decision opens up a wide field for the laws to be used against political, religious or academic statements that could be interpreted as offering support for terrorism. Anyone who says that terrorism could be justified because of oppression, or who expresses sympathy for the assassination of a repressive figure, could be subject to prosecution. By retaining and extending these laws, the Labor government has shown its contempt for basic democratic rights.