Australian “foreign fighter” bill extends police powers

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The Australian government’s Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill, which was rushed into parliament yesterday, is a vast multi-faceted package of seven schedules that add many draconian features to the battery of “terrorist” legislation already imposed since 2002.

The bill’s five primary measures are: widening the “foreign incursion” offences; criminalising terrorism-related “advocacy;” allowing passports and visas to be secretly revoked; expanding the use of control orders; and permitting secret searches of premises (see: “Australian terrorist laws a cover for anti-democratic measures”).

However, the bill also includes further far-reaching provisions. In some cases, the amendments are incremental and involve seemingly slight changes in terminology, but each measure increases the powers of the government and its police and intelligence services, and lowers the thresholds for the use of these powers.

Taken as a whole, the changes escalate a framework that includes five different types of detention without trial—Australian Security Intelligence Organisation (ASIO) interrogation; control orders; preventative detention orders; police detention to “investigate” arrested suspects; and airport detention by customs officers.

Although nominally directed against terrorists and “foreign fighters,” these powers overturn fundamental legal rights and protections against arbitrary power. They can and will be used in the future against political opponents as opposition mounts to the program of war and austerity.

The following are the main measures:

Detention powers

• Making it easier for ASIO to get a questioning warrant to secretly detain and interrogate someone suspected of having information about terrorism, by removing a requirement that this be a “last resort” compared to other means of obtaining intelligence.

• Increasing the already arbitrary arrest powers of the Australian Federal Police, so that a police officer can detain anyone he or she “reasonably suspects” of having committed a crime. This is a looser standard than the current “reasonably believes,” which courts have said requires certain evidence of an offence being committed.

• Similarly, allowing preventative detention orders to be imposed, without notice, on people only “suspected” of being linked to an imminent terrorist act, and to permit such orders to be issued by electronic or verbal means.

• Giving customs officers expanded powers to detain people, including at airports, and to hold them incommunicado for up to four hours.

Enforcement and surveillance powers

• Retaining and widening ASIO’s powers to kill or maim suspects in order to enforce questioning warrants, removing a previous restriction on using deadly force only if there was no alternative way of detaining someone.

• Granting wider telecommunications interception powers to the police and intelligence agencies, including for alleged control order breaches and foreign incursion offences.

Broader crime definitions

• Imposing life sentences for giving or raising money to “support” or “promote” the commission of a terrorist offence, with a narrowed defence for aid provided *solely* for “humanitarian purposes.”

• Expanding the definition of terrorist training to cover alleged informal training where it is not clear who is conducting the training.

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• Enlarging the definition of terrorist recruiting from "procuring, inducing or inciting" to "inducing, inciting or encouraging," with the looser term "encouraging" making it easier to convict.

Reduced trial and appeal rights

• Widening the list of offences for which bail can be refused, including to cover foreign incursion charges.

• Allowing greater use of evidence supplied by foreign agencies or courts in order to secure convictions, even if the evidence would not have been otherwise accepted in an Australian court.

• Removing appeal rights against a number of powers, including the suspension of passports and visas.

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