New Australian “anti-terror” laws overturn basic legal rights

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Among the first bills to be tabled in the Australian parliament after the Liberal-National Coalition government barely survived the July 2 election are two “anti-terrorism” laws that contain serious attacks on fundamental democratic and legal rights. Significantly, both bills have bipartisan support, with the Labor Party already pledging in-principle backing.

The political establishment is moving, as a matter of high priority, to bolster the repressive police-intelligence apparatus with measures that can be used to target political opponents, not just a relatively small number of Islamic extremists. This is under conditions of mounting war in the Middle East, growing tensions with China and a deepening domestic offensive against welfare, essential social programs and the living standards of the working class.

Both bills go well beyond what the government has publicly acknowledged. In a media release, Attorney-General George Brandis presented the bills as providing for the “ongoing detention of high risk terrorist offenders” and reducing the age from 16 to 14 for control orders to be imposed on teenagers.

But the details of the first bill show that the convictions for which prisoners could be detained indefinitely, even after serving their sentences, extend beyond terrorist-related offences to others that could be used against opponents of the government and its escalating involvement in US-led wars, including the air force bombings in Syria.

The Criminal Code Amendment (High Risk Offenders) Bill violates the core principle of habeas corpus—no detention without a criminal trial. It allows for prisoners to be incarcerated indefinitely, using renewable three-year detention orders. This means locking prisoners away for life, regardless of their original terms of imprisonment.

Such orders require no proof of any intent to commit a further offence—just a “high degree of probability” that a crime could occur. This standard of proof is much lower than the criminal one of “beyond a reasonable doubt of guilt.”

In deciding to issue orders, the courts are instructed to consider reports provided by “relevant experts” on the “unacceptable risk” of the prisoner committing a terrorist-related offence if released. The prisoner’s “criminal history” can be taken into account—reversing the legal principle of excluding prior convictions from decisions about guilt.

The “relevant experts” must say whether the prisoner has “actively participated in any rehabilitation or treatment programs.” Any prisoner who refuses to cooperate with the authorities, such as by becoming an informer or undercover agent, is likely to remain incarcerated.

The bill has been approved unanimously by the state and territory governments, Coalition and Labor alike, which will adopt matching legislation. Such state laws are being used to evade the Australian Constitution, which has no bill of rights but does effectively prohibit punishment, including detention, by the federal government except via conviction by a court.

Brandis described the bill as dealing with “terrorist offenders” who pose an “unacceptably high risk” to the community if released. But, firstly, the official definition of terrorism is wide enough to cover political acts of protest that cause any injury or property damage.

Secondly, the crimes for which prisoners can be incarcerated include many loosely-defined offences, such as “providing or receiving training” or “possessing things” connected with terrorist acts, or “collecting or making documents likely to facilitate

terrorist acts." On the list as well is membership of, or raising funds for, an organisation declared by decree to be terrorist, and "providing support" to such a "terrorist organisation."

Also covered are prisoners convicted of treason or "foreign incursions." Treason includes "assisting enemies at war with the Commonwealth" and "assisting countries or forces engaged in armed hostilities against the Australian Defence Force"—which could mean opposing wars and other military interventions.

"Foreign incursions" include entering areas declared by the government, such as Syria, or preparing to engage in "hostile activities" (including damaging government property) in a foreign country. The bill extends to allowing the use of a building to facilitate recruitment to "serve in or with an armed force in a foreign country."

The second bill, the Counter-Terrorism Legislation Amendment Bill, not only allows 14-year-olds to be placed under control orders—a form of house arrest, or curfew and tracking. It also targets supposed "hate preachers," who could be jailed for seven years for a vague new crime of "advocating genocide."

"Advocating genocide" is a deceptive term. It can be committed by "counselling, promoting, encouraging or urging" a broad range of conduct, such as inflicting "destructive" conditions of life." A person can be convicted simply on the basis of comments they make, publicly or privately, that are deemed to be "reckless as to whether another person will engage in genocide."

The bill's explanatory memorandum states that the offence is directed against the use of social media by "hate preachers" who supposedly choose their words carefully so that there is insufficient evidence of incitement, urging or intention to cause harm.

The 142-page bill boosts an entire range of police and intelligence powers of entry, search, surveillance and electronic tracking. It also extends the use of preventative detention orders beyond alleged "imminent" threats of terrorism to where there are "reasonable grounds to suspect" that a terrorist act could occur within 14 days.

As well, there are wider powers to close court proceedings and prevent disclosure of "national security information," including in control-order hearings. Jail terms of up to 10 years can be imposed for disclosing, even recklessly, information about Australian Security Intelligence Organisation (ASIO) activities, if that disclosure "endangers the health or safety of any person or prejudices the effective conduct of a special intelligence operation."

The two bills add to the more than 60 laws introduced under the banner of the "war on terrorism" by Coalition and Labor governments over the past 15 years. Sweeping precedents have been set, such as detention without trial, that erode essential legal and democratic rights. This barrage is accelerating. The latest bills constitute the sixth major tranche of such laws since the Coalition took office in 2013.

US-led invasions and wars, in which Australia has participated, have devastated the Middle East, killing hundreds of thousands of people and sending millions fleeing their homes.

Now, with Labor's backing, and assisted by the corporate media, Prime Minister Malcolm Turnbull's unstable government is seizing upon overseas terrorist attacks and whipping up local terrorism scares to justify erecting a police-state framework in the face of rising social and class tensions. Two recent "terrorism" arrests, one against a right-wing activist and the other against a Kurdish journalist, highlight the capacity of the laws to be used against political opponents, particularly anti-war and socialist organisations.

These measures, accompanied by intensifying witch-hunting of Muslims, seek to divide the working class along communal and ethnic lines, and create the ideological conditions for escalating Australian participation in the widening war provoked by the US in the Middle East.