In the name of combating foreign interference

Australia’s new secrecy laws block exposure of government crimes

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Under the cover of outlawing so-called improper foreign influence in Australia, the Espionage and Foreign Interference (EFI) Act pushed through parliament last month contains 12 new or expanded secrecy offences.

These are specifically designed to criminalise the exposure of abuses—especially war crimes and human rights violations—committed by Australian governments and their US partners.

The laws can outlaw reporting on everything from the SAS killings of civilians in Afghanistan to the torture-like treatment of refugees in Australia’s Pacific island detention camps.

Terrified of growing unrest, hostility toward capitalism and opposition to war, the Australian government is seeking to block access, especially via the Internet, to critical information that the public has the right to know.

Above all, the targets are whistleblowers and journalists such as WikiLeaks editor Julian Assange and former US National Security Agency (NSA) contractor Edward Snowden. They helped alert the world’s people to the atrocities, regime-change operations and mass surveillance of Washington and its military-intelligence allies.

Anyone who assists individuals to reveal such crimes, or reports their exposures, including writers and publishers on progressive, left-wing or anti-capitalist media outlets, can now face lengthy imprisonment.

This is on top of a raft of secrecy laws imposed over the past decade to outlaw reportage of secretive operations by the spy services, identification of undercover intelligence agents and disclosures about the treatment of refugees by the militarised Australian Border Force.

The latest secrecy laws are a crucial element in the anti-foreign influence laws being imposed by Prime Minister Malcolm Turnbull’s government, with the opposition Labor Party’s bipartisan backing, to suppress dissent amid intensifying US-led preparations for war against China.

In an extraordinary June 8 radio interview, Andrew Hastie, who chairs the Parliamentary Joint Committee on Intelligence and Security, pointed to the real thrust of the measures.

Hastie, a member of the Liberal-National Coalition government and former SAS officer, said Australia’s role in the US-led Five Eyes intelligence alliance made the country a “soft underbelly” for authoritarian regimes “seeking to get secrets from the United States.”

Australia’s spy and electronic surveillance agencies, which monitor the highly strategic Indo-Pacific region, are a key link in Five Eyes network with the NSA and its counterparts in Britain, Canada and New Zealand.

Hastie told Australian Broadcasting Corporation radio: “What we can’t have is radical transparency.” Questioned on what he meant by that, he said: “Radical transparency is Julian Assange dropping a whole bunch of Commonwealth secrets out for public consumption.”

Hastie, having received closed-door intelligence “briefings” in Washington, along with other members of his committee, was drumming up the agitation by the government and the intelligence agencies for the rapid passage of the legislation.

His remarks underscored the intense pressure being applied to the Turnbull government by the US military-intelligence establishment to pass the legislation and step up its commitment to the US military confrontation with China, Australian capitalism’s largest export market.

Hastie’s comments also highlighted the fact that the laws target any independent investigatory journalism that endangers ruling class interests, especially by laying bare government war plans, lies and propaganda.

The new secrecy offences go significantly beyond the old Crimes Act official secrets laws, which they replace.

First, they have a wider scope. Instead of banning the disclosure of secret documents—either classified, “prescribed” or relating to “prohibited places”—they outlaw divulging “inherently harmful information” or material that

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"is likely to cause harm to Australia's interests."

"Inherently harmful information" covers classified material, information obtained by the Australian and allied intelligence agencies, and information relating to the operations of the Australian or foreign law enforcement agencies. Thus, for example, WikiLeaks' publication of files exposing the CIA's computer hacking activities is now a serious crime in Australia.

"Cause harm to Australia's interests" is even more sweeping. It includes to "harm or prejudice the health or safety of the Australian public or a section of the Australian public" or "harm or prejudice the security or defence of Australia." This extends to information that supposedly endangers any Australian person or threatens the country's anti-refugee operations or the profit interests of Australian companies.

The EFI Act defines "national security" to include "protection of the integrity of the country's territory and borders from serious threats" and "the country's political, military or economic relations with another country or other countries."

Second, the new laws apply to everyone, not just internal whistleblowers, as the Crimes Act offences did. The EFI Act outlaws not just leaking, but "dealing with" information. "Deal with" is defined to cover a long list of activities: "collect," "possess," "make a record of," "copy," "alter," "conceal," "communicate," "publish" and "make available."

"Make available information" includes "place it somewhere it can be accessed by another person," "give it to an intermediary" and "describe how to obtain access to it, or describe methods that are likely to facilitate access to it (for example, set out the name of a website, an IP address, a URL, a password, or the name of a newsgroup)."

In other words, whoever is sent information, and therefore automatically possesses it, can be convicted, as can individuals associated with WikiLeaks or any other platform that is set up to anonymously receive material from whistleblowers.

Third, the new laws particularly target non-corporate media websites by providing a limited defence for people "engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media." According to the explanatory memorandum attached to the act, this defence is confined to the staff of "media organisations."

The defence is highly conditional. It only applies if the individual "reasonably believed" that dealing with the material was "in the public interest." These terms are not defined, leaving the way open for politically selective prosecutions. Who decides what is "reasonable" and what the "public interest" is?

Anyone claiming the defence also bears an "evidentiary burden" of proving it, undercutting the centuries-old requirement for the prosecution to prove guilt "beyond a reasonable doubt."

In addition, the "reasonable belief" defence does not apply to material that identifies an intelligence agent or a person in witness protection program, or that "directly or indirectly" assists a foreign intelligence agency or military organisation.

However, media companies that cooperate with the intelligence apparatus in censoring sensitive material to remove any damning information are likely to be protected as acting "reasonably" in the "public interest."

The Crimes Act penalties have been substantially increased, up to 10 years for an "aggravated" offence from seven years' imprisonment for leaking official secrets that allegedly prejudice Australia's military defence or security. There is a roughly proportional increase in the jail terms for lesser offences.

People can be convicted even if they did not intend to "deal with" information that was "harmful" but were merely "reckless" as to that possibility. That is, they were aware of a "substantial" and "unjustifiable" risk of such an outcome. And "strict liability" applies to some offences. For example, an "aggravated offence" can be committed even if the person is not aware that the document had a security classification.

As with some other parts of the EFI Act, the attorney-general must consent to prosecutions, but that only magnifies the danger of political victimisation.

The secrecy laws, like the "foreign interference" legislation as a whole, are designed to give governments and the intelligence-police apparatus a broad array of powers to try to silence dissent and jail those who reveal the truth about the drive to war and austerity.

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