# Political and media witch hunt launched over release of a “terrorist” in Australia

**Mike Head**
**22 December 2023**

A revealing outcry has been whipped up by Australia’s ruling parties and the corporate media over a court order that released Abdul Nacer Benbrika, 63, a man who had spent nearly two decades in prison on vague terrorism-related charges.

On Tuesday, Victorian state Supreme Court Justice Elizabeth Hollingworth granted Benbrika’s release on an Extended Supervision Order (ESO)—essentially a highly-restrictive new form of house arrest.

Amid incendiary headlines about a “terror leader” and “bomb plotter” being allowed to “walk free,” the Albanese Labor government and the Liberal-National Coalition both criticised the ruling and vied to outdo each other to declare which is the most hard-line in supposedly “keeping Australians safe.”

The ongoing Benbrika saga, which began with his much-publicised arrest in 2005, shows how the sweeping and unprecedented “counter-terrorism” laws imposed under the banner of the “war on terror” are being used to overturn basic legal and democratic rights.

As Benbrika’s case demonstrates, these laws have been deployed for frame-ups, political targeting, indefinite detention and other police-state measures.

Under Tuesday’s court order, Benbrika will be subject to 30 restrictions, including electronic ankle bracelet monitoring, a curfew, limitations on whom he can contact, and requirements to attend compulsory “de-radicalisation” and psychiatrist sessions.

Benbrika’s free speech rights will be ended. He will be banned from speaking publicly about certain subjects.

Other conditions control Benbrika’s use of technology, his ability to seek employment or volunteer, his freedom to travel and his financial transactions.

The Australian Federal Police (AFP) will have powers to conduct searches to ensure Benbrika is complying with the supervision order. Any alleged breaches by Benbrika could result in five years’ imprisonment and/or the cancellation of his citizenship.

This is after already being kept behind bars for three years, on a Continuing Detention Order (CDO)—a potentially endless new form of imprisonment—imposed in 2020 after Benbrika had served a 15-year sentence.

Justice Hollingworth rejected an application by Attorney-General Mark Dreyfus for a three-year ESO, instead making a one-year order, to be reviewed in 12 months.

The judge was scathing of the federal Attorney-General’s department and the Department of Home Affairs, saying they had withheld expert reports that criticised official assessment tools used to measure risks of re-offending by released prisoners.

Justice Hollingworth said reviews of the tools, known as VERA-2R and Radar, found they relied on theoretical and empirical evidence of “poor predictive validity.”

The use of such devices itself points to the despotic “thought crime” nature of such detention and supervision orders, based on assertions of what a person might do in the future.

In Benbrika’s case, those damning reports were kept secret from his legal team at the end of his prison term and during reviews of his ongoing detention order.

CDOs and ESOs violate the core legal principle of habeas corpus—no detention without a criminal trial. They allow prisoners to be punished indefinitely, using renewable orders of up to three years.

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.”

Since his arrest in 2005, Benbrika has been demonised by the media and governments as “one of Australia’s most notorious terrorists.” He is repeatedly declared to have been “plotting” to target major sporting events, including a football grand final at the Melbourne Cricket Ground (MCG), and Sydney’s Lucas Heights nuclear reactor in 2005 or 2006.

But Benbrika was not convicted of such plots. A witness at his trial testified that Benbrika had spoken about carrying out an attack at the MCG and mentioned Crown Casino as another possible target. However, the trial judge, Victorian Supreme Court Justice Bernard Bongiorno, discredited that witness’s evidence, calling him “a liar, a cheat and a fraudster of significant accomplishment.”

Instead, Benbrika was sentenced to 15 years' imprisonment on two charges, one of being a leading member of an unnamed "terrorist organisation"—apparently consisting only of his alleged followers—and another of possessing "a thing connected with the preparation of a terrorist act."

His conviction was based almost entirely on covertly-recorded conversations between a group of Islamic men that included nebulous statements about wanting to do "something big" or kill people to stop Australia's involvement in the US-led occupation of Iraq.

The only explosion presented as evidence in the trial was one conducted by a police provocateur. An undercover infiltrator, identified only as Security Intelligence Officer 39, took Benbrika to a remote hilltop to show him how to detonate an ice-cream container of ammonium nitrate. It was a classic case of entrapment, a technique commonly used for frame-ups.

Any talk of killing innocent people expresses the reactionary perspectives of Islamic fundamentalism and individual terror. Yet there was no evidence that Benbrika or anyone in the group took these words seriously enough to actually do anything.

Benbrika's conviction was legally possible because the Coalition, Labor and the Greens had combined in 2005 to amend the terrorism laws to enable convictions for even talking about "a terrorist act" in a hypothetical sense, without any specific location or plot.

Jailing Benbrika and others for doing no more than voicing hostile sentiments toward the government and the wars in Iraq and Afghanistan set a dangerous precedent for use against political dissent.

Tuesday's ruling by Justice Hollingworth triggered a reactionary political storm. Attorney-General Dreyfus issued a statement implicitly criticising the judge, declaring that the ESO she imposed on Benbrika was not as extensive as the government had sought.

Acting Liberal-National Opposition Leader Sussan Ley condemned the verdict, describing Benbrika as "the worst of the worst" who had "wanted to blow up the MCG." She accused Prime Minister Anthony Albanese of failing to "keep Australians safe" and demanded that he sack Dreyfus for not keeping Benbrika in prison.

Dreyfus responded by attacking Ley from the right, accusing her of undermining public confidence in the federal law enforcement agencies, which had sought the ESO.

The PDO and ESO legislation, adopted in 2016, extends to those convicted of "providing support" to an organisation—such as Hamas—declared by ministerial decree to be "terrorist." It also goes beyond terrorism-related offences to include "treason," which covers "assisting enemies at war with the Commonwealth." That could mean opposing military interventions.

In effect, Benbrika became a test case for provisions that can be invoked more widely, including against anti-war and other political activists. The legal definition of "terrorism" is so broad that it can cover any anti-government activity, or even discussion, that could allegedly involve violence or damage to property.

Together, Labor and the Coalition have imposed more than 120 packages of "terrorism" legislation since 2001 to bolster the powers and resources of the state apparatus. As the various threats to outlaw the widespread protests against the Zionist barbarism in Gaza demonstrate, these laws could be applied to any opposing views.

Over the past few weeks, Labor and the Coalition have taken this assault on fundamental democratic rights even further, while simultaneously backing the onslaught on the Palestinians, in clear violation of international law. They jointly rammed through parliament, without any semblance of debate, two far-reaching bills.

One bill sought to either re-detain or impose ESO-type supervision orders on immigration detainees released after a High Court ruling on November 8 that their indefinite detention amounted to unconstitutional punishment by executive fiat.

The other bill sought to overturn an earlier similar High Court order striking down executive citizenship-stripping powers. That legislation handed politically-loaded powers to judges to revoke citizenships, thus depriving people of core civil and democratic rights, on the grounds that a person's "serious offences" had "repudiated their allegiance" to Australia by rejecting "Australian values."

These "serious offences" include terrorism-related acts, advocating mutiny, treason, espionage, foreign interference and foreign incursion. Because of the broad definitions of these offences, a person could lose their citizenship for supporting the right of people in Gaza to resist the ongoing Israeli genocide.