

Australia's new espionage laws target whistleblowers and political opponents

By Mike Head
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The Espionage and Foreign Interference (EFI) Act that the Turnbull government and the Labor Party opposition jointly rammed through Australia's parliament on June 28 radically extends the espionage offences in the Criminal Code.

Like the "foreign interference" legislation as a whole, the laws have been imposed in the name of combating unwanted influence by other countries, but the real targets are political opponents of the US-led anti-China war drive and other predatory operations by the corporate elite.

Eleven redefined espionage-related crimes have been created, going far beyond the previous application to spying by, or on behalf of, a foreign government.

The expanded provisions provide another means, on top of new secrecy offences, to criminalise the possession or release by anybody, including Australian citizens, of information that could "prejudice national security."

As with the secrecy laws, the redefinition is particularly designed to prosecute and imprison those, like WikiLeaks editor Julian Assange, who help publish material that exposes the war crimes and political abuses committed by the Australian government and its closest allies, primarily the US.

The espionage laws could also be used against people blowing the whistle on abuses committed against asylum seekers, or assisting to circulate revelations about the exploitative conduct of Australian companies operating in the Indo-Pacific or elsewhere.

"National security" is defined to include "the 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."

This covers everything from enforcing Australia's "border protection" regime of militarily repelling or imprisoning refugees, to shielding the US military-intelligence alliance and supporting the profit interests and plundering global activities of the Australian capitalist class.

The new main espionage offence carries a maximum punishment of life imprisonment, the most draconian penalty possible under Australian law. Espionage is redefined to include "dealing with information" that has a security classification or "concerns Australia's national security." There needs to be an intention to "prejudice national security,"

and a result that information is "communicated or made available" to "a foreign principal or a person acting on behalf of a foreign principal."

However, even if the accused person did not intend to harm "national security," but is found guilty of being "reckless" as to that risk, the result can be imprisonment for up to 25 years.

"Foreign principal" includes not just overseas governments but "foreign political organisations" and "public international organisations," such as the UN. In other words, divulging sensitive incriminating information to an overseas political entity or an international agency is now espionage, one of the most serious offences in the Criminal Code.

As with the new secrecy offences, "dealing with information" extends criminal liability well beyond stealing, covertly obtaining or leaking information—the activities traditionally associated with spies. "Deal with" is defined to include "collect," "possess," "make a record of," "copy," "alter," "conceal," "communicate," "publish" and "make available."

So, whoever is sent information, including a journalist or web site, and therefore "possesses" it, can be convicted, even if they have not published it. The same applies to WikiLeaks or other platforms set up to anonymously receive material from courageous whistleblowers.

One subdivision of the new espionage offences specifically covers dealing with information "on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal." This is the type of conduct normally associated with spying.

The existence of this specialised subdivision only makes clearer the government's intent to apply the other espionage categories to people who are political opponents, not spies working for a government.

Another subdivision consists of "espionage-related offences," such as "soliciting or procuring an espionage offence or making it easier to do so." This offence can be committed even if no espionage offence actually occurs, or it is impossible for such an offence to have resulted.

Similar provisions exist for another "espionage-related" crime, that of "preparing" for espionage. Both these offences are punishable by up to 15 years' imprisonment.

The EFI Act likewise broadens several other offences carrying potential life imprisonment.

The crime of treason is redefined to extend to “materially assisting” any “enemy” engaged in “armed conflict involving” Australia. By contrast, the previous definition referred to “war with” or “armed hostilities against” Australia. No formal “war” or “hostilities” now need to be declared for this offence to be triggered.

The new crime can be committed even if the accused person is only “reckless” as to whether the “enemy” is actually “engaged” in armed conflict involving Australia.

“Materially assisting” is not defined. The phrase could extend to opponents of Australia’s military interventions who protest against the sending of troops. A 2006 law reform commission report said the formulation could cover urging conscientious objection or calling on soldiers to lay down their arms.

A crime of treachery has been extended to cover conduct that “involves force or violence” with the “intention of overthrowing” the federal government’s “lawful authority.” The previous offence of treachery referred only to “trying to overthrow” the Australian Constitution or a federal or state government. The extension could include supposedly violent demonstrations calling for the abolition of the Australian Federal Police or the intelligence agencies.

Sabotage offences are expanded to cover any action causing damage to public infrastructure—not just Defence facilities, as was previously the case—with intention to “prejudice national security.” This would include any federal government “infrastructure, facility, premises, network or electronic system” and all telecommunications, utilities and transport facilities, whether run by governments or corporate giants.

New related offences extend to “making public infrastructure vulnerable to misuse, unauthorised access or damage,” or planning any of these offences. Trying to hack into a government or corporate computer network, for example, has become punishable by up to 25 years’ imprisonment.

These are war preparations. Any action that allegedly compromises a system regarded as vital during war is now punishable as sabotage or sabotage-related.

Similarly, a new crime has been created of “advocating mutiny” of a member of the armed forces, while “reckless” as to whether such a mutiny would result, and even if none occurs. This replaces the previous “inciting mutiny” offence. “Advocates” is said to include “counsels, promotes, encourages or urges.” This extends beyond “incites,” which requires specific instigation.

“Mutiny” is broadly defined to include: “to resist such lawful authority in such a manner as to substantially prejudice the operational efficiency of the Australian Defence Force or of, or of a part of, a force of another country that is acting in cooperation with the Australian Defence Force.”

This could cover trying to enter a military base hosting US

troops or seeking to disrupt joint exercises or weapons testing. It could extend to publicising (“promoting”) refusals by soldiers or sailors to carry out criminal or inhuman actions, such as repelling refugee boats or killing civilians alleged to be supporting hostile forces.

The penalty is up to seven years’ imprisonment.

A vague new offence of “interference with political rights and duties” outlaws the “use of force or violence, or intimidation, or the making of threats of any kind” that “results in interference with the exercise or performance, in Australia by any other person, of an Australian democratic or political right or duty.”

This crime, punishable by up to three years’ jail, replaces a narrower offence of interfering with political liberty. The new crime could cover participating in a counter-demonstration against a pro-military or far-right rally, or protests or strikes that allegedly obstruct a politician.

The government’s powers to strip Australian citizenship from dual citizens by arbitrary decree has been expanded to cover people convicted of many of the new offences. These powers were created by legislation that the Coalition government pushed through parliament, also with the Labor Party’s assistance, at the end of 2015.

Likewise, the telecommunications interception powers of the police and intelligence agencies, which have been vastly expanded under the banner of the “war on terrorism,” now extend to investigating all the new offences.

None of these details, or their implications, has been reported in the corporate media. Fearing opposition, the political and media establishment is doing everything it can to keep the population in the dark about these dramatic shifts in the legal system and their connection to the preparations for war.

To counter this conspiracy of silence, the WSWS is providing full coverage of the laws and the Socialist Equality Party (Australia) is holding public meetings to discuss them and raise the need for a powerful political movement in defence of democratic rights and civil liberties, and against the plunge toward war.

The author also recommends:

Democratic rights under attack in Australia

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