

Australian public servant faces dismissal for criticising refugee policies

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In a decision with far-reaching implications for political free speech, an Australian federal court has ruled that a Canberra public servant can be sacked for condemning the official refugee policies, even though she did so in her own time, via an anonymous personal Twitter account.

The ruling effectively gives any federal, state or local government—or any other employer—carte blanche to dismiss workers for expressing political views.

Michaela Banerji, a public affairs officer in the immigration department, used her private @la legale account and other social media to denounce or mock the increasingly brutal steps by both the Labor government and the Liberal-National Coalition opposition to block and deport asylum seekers.

Banerji was subjected to an intensive investigation, which included monitoring her after-hours Internet activity, after she criticised tweets posted by one of the Labor government's chief immigration department spokesman, Sandi Logan.

According to the court, Banerji also posted comments on the conditions inside immigration detention centres, and statements by the prime minister, foreign minister, opposition leader and shadow immigration minister.

Banerji has not yet been dismissed, but the ruling clears the way for that to happen. Federal Circuit Court judge Warwick Neville rejected Banerji's objection that her right to voice criticisms was protected by the implied freedom of political communication in the Australian Constitution. There was no such "personal right," Neville declared.

Responding to the decision, via a posting on *Government News*, a private media web site, Banerji stated: "I was not ever tweeting on behalf of the department, but in my own time and using a pseudonym. I did not ever defame or insult. I simply

expressed political opinion. Do you consider it correct that a class of persons, public servants, should not have freedom of political opinion? First public servants, then teachers, then nurses ... the list could go on. And all of this during an election campaign."

The Australian Constitution, adopted in 1901 under the supervision of the British colonial authorities, contains no bill of rights, and no guarantee of any basic democratic rights, including the right to vote.

An implied constitutional freedom of political communication was recognised by the High Court in the early 1990s, but it bestowed no positive right to free speech akin to the First Amendment to the US Constitution. Instead, it promised limited protection from government interference in political discussion, except where that interference served a "legitimate" government function.

According to the judge, it was "legitimate" for the Australian Public Service Code of Conduct and departmental guidelines to say it is "inappropriate for the department's employees to make unofficial public comment that is, or is perceived to be, harsh or extreme in its criticism of the government."

Judge Neville insisted that the Constitution provided no "licence to breach a contract of employment." This means that governments and employers have a free hand to use employment contracts to gag workers, even in their own time, in the face of deepening attacks on public services, jobs and working conditions.

An article on *Government News* commented: "One distinctly slippery slope is industrial activity, such as protests against funding cuts, where public servants routinely use their private social media accounts to help organise and gather public support. Some private sector organisations routinely use specialist human resources and reputation management firms to monitor their

employees' social media activity with a view to weeding out anyone who has the potential to cause problems."

Judge Neville drew upon a string of rulings by the High Court, Australia's supreme court, over the past 18 months, shredding what was left of the implied freedom of political communication in the constitution.

In a 2012 case, the High Court upheld sweeping gag orders—banning all public comments—imposed on Palm Island leader Lex Wotton after he was released on parole, having spent two years in jail on trumped-up "riot" charges. Another ruling early this year backed the power of Adelaide City Council to prohibit the distribution of any leaflets in the city's main pedestrian mall. A third case permitted an Islamic cleric to be prosecuted for sending allegedly "offensive" antiwar letters to the families of Australian soldiers who died in Afghanistan.

In each case, the federal Labor government intervened to argue against free speech, making wide-ranging submissions that would give governments almost unlimited powers to prohibit political activity and protests, in the name of serving "legitimate ends," such as ensuring "public safety" or protecting people from disruption or disturbance.

Even the limited "implied freedom" in the constitution cannot be tolerated by governments or the corporate elite under conditions where they fear growing opposition to their agenda of militarism, austerity and attacks on legal and democratic rights. A public servant objecting to the cruel treatment of refugees is now regarded as a political threat.

In another recent decision, the Federal Court rubberstamped the removal of Occupy Sydney protesters from Sydney's Martin Place last year, and the charging of participants with the offence of "failing to comply" with a notice erected by the city council. The judge conceded that the police crackdown cut across political communication, but insisted that it served the "legitimate end" of "protecting public health, safety and amenity."

Over the past decade, ever-greater inroads have been made into freedom of speech and other fundamental democratic rights, including those of refugees, who are now being forcibly transported to Papua New Guinea or Nauru in violation of international law. Under the so-called "war on terrorism," bipartisan legislation was

passed, outlawing expressions of opinions that could be interpreted as supporting terrorism—broadly defined in ways that can cover a range of political dissent—and permitting compulsory secret questioning, "control orders" and various types of detention without trial. Step-by-step, these police-state powers have been extended to other agencies that clearly have no claim to be combating terrorism, such as the Australian Crime Commission.

This is part of a global assault on democratic rights, most sharply expressed in the persecution by the Obama administration in the US, backed by its allies—including the Australian Labor government—of whistleblowers such as Edward Snowden, Bradley Manning and Julian Assange, who have exposed the war crimes and illegal surveillance being conducted, in blatant violation of core legal and constitutional rights, by these governments against the world's population.



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