Australian government unveils sweeping anti-democratic "foreign interference" bills

Part 2: Criminalising overseas links and donations

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This is the second part in a three-part series examining the wide-ranging implications for basic democratic rights of five bills tabled in the Australian parliament in December, which outlaw involvement in alleged "foreign interference" in Australian political and economic affairs. Part one *was published on January 31 and* part three *on February 2. In their sweeping language, the bills constitute an all-out assault on basic political and democratic rights.*

The Australian government's "security" bills target, first and foremost, anyone accused of links with China. In introducing them, Prime Minister Malcolm Turnbull accused the Chinese Communist Party of "covertly interfering" with "our media, our universities and even the decisions of elected representatives."

More broadly, however, the bills outlaw any "collaboration" with overseas organisations. One bill contains severe criminal penalties for crimes related to "foreign interference." Another imposes a new regime of registration and monitoring by authorities of political parties and other groups.

"Foreign interference" crimes

The National Security Legislation Amendment (Espionage and Foreign Interference) Bill creates unprecedented new offences for involvement in *foreign interference*.

The language is sweeping. Prison terms of up to 20 years could be imposed for conduct "on behalf of, or in collaboration with, a foreign principal," that is intended to "influence a political or governmental process" or "influence the exercise" of an "Australian democratic or political right or duty."

"In collaboration with" is not defined. It could cover consultation, information-sharing, coordination, or phone or online communication. Thus, campaigning against Australian involvement in a US-led military intervention anywhere in the world could be outlawed if any contact were made with an organisation in that country.

Even opposing punitive sanctions on North Korea or trade war measures against China could be criminalised if organisations in those countries voiced support for such a campaign in Australia.

"Foreign principal" is defined to include not just governments, authorities and government-controlled enterprises, but also "foreign political organisations" and "foreign political parties." As a result, any organisation engaged in globally-coordinated political action could be legally sanctioned.

The broad character of the definition has particular consequences for any dealings with China, where there is a measure of state control over many institutions and economic enterprises. Even if untrue, such an accusation could be used to criminalise relations with a broad range of Chinese cultural and educational bodies, along with the media, particularly if there were any implication of sympathy towards Beijing.

Former Foreign Minister Bob Carr is currently director of the Australia-China Relations Institute, a think tank at the University of Technology, Sydney, which has been critical of the government stance toward Beijing. For simply communicating with a Chinese university in order to highlight an aspect of Chinese policy, he could be prosecuted for conduct "on behalf of, or in collaboration with, a foreign principal," that is intended to "influence a political or governmental process."

The definition also covers international organisations, even the UN. The bill's explanatory memorandum claims that handing sensitive information to such bodies could cause significant damage to Australia's international relationships. This could extend to reporting Australian war crimes or violations of the basic rights of refugees to the United Nations, or to international human rights bodies.

"Influence the exercise" of an "Australian democratic or political right or duty" could include supporting a global boycott campaign or joining international protests against any decision to go to war.

"A part" of the conduct must involve being "covert" or "deceptive," or else making threats of "serious harm" to a person or "a demand with menaces," but these terms also could cover many sorts of activity.

The government's explanatory memorandum states: "The reference to 'covert' is intended to cover any conduct that is hidden or secret, or lacking transparency. For example, conduct may be covert if a person takes steps to conceal their communications with the foreign principal, such as deliberately moving onto encrypted communication platforms when dealing with the foreign principal…"

In other words, simply using an encrypted phone or Internet app to communicate with a "foreign principal" could lead to imprisonment. Using standard means to try to protect one's privacy, and that of others, would become a serious offence.

Even where a person is only "reckless" as whether their conduct would influence a political issue, the penalty could be 15 years' imprisonment. No actual intention to "influence" is necessary. "Reckless" means simply being aware of a "substantial" and "unjustifiable" risk that the influence would occur.

Other far-reaching offences in the bills also use "reckless" as the legal benchmark, overturning the need for the authorities to prove intention. One is *espionage*, which carries life imprisonment. It is redefined as "dealing with information" that "concerns Australia's national security" while intending to prejudice, or being reckless as to prejudicing, national security, with the result that information is made available to a "foreign principal."

"National security" is a notoriously elastic term. Courts have consistently refused to question a government's assertion that "security" is threatened. To further block any legal challenges to government claims of damage to "national security," the Attorney-General could issue a certificate stating that security was endangered.

Official secrecy provisions would be expanded, both in their scope and the severity of penalties. Existing jail terms of two years for leaking classified documents would become jail terms of up to 20 years for communicating "inherently harmful information" (i.e., even if not classified as secret), or information that "is likely to cause harm to Australia's interests," that was made or obtained by a Commonwealth officer.

For instance, doctors and other staff in Australia's refugee detention camps on Nauru and Papua New Guinea's Manus Island, who have defied the government by publicly denouncing the abuses occurring in these hellholes, could become victims of these provisions.

The new legislation's measures would cover not just whistleblowers who seek to inform the public about criminal government operations, but anyone who helped release or report their revelations, including web sites.

Registration and monitoring

The Foreign Influence Transparency Scheme Bill establishes a new US-style apparatus that forces people, parties and groups to register with the government if they are undertaking political activities "on behalf of" a "foreign principal."

Like the first bill, this provides a ready-made means for monitoring and persecuting anyone linked to China, but it goes far further. Even a person who helped a non-Australian citizen or resident to make representations about their visa status would need to register, for example.

"Foreign principal" is defined even more broadly than in the Espionage and Foreign Interference Bill. It includes non-permanent Australian residents, as well as foreign businesses and political organisations that operate in another country, whether officially registered or not.

"On behalf of" would include "in collaboration with." According to the explanatory memorandum, "collaboration" would cover "working together," even where that common purpose was not the only reason for undertaking an activity.

So assisting or cooperating with a non-permanent resident, of Chinese or any other descent, on any political issue, would require registration. The forbidden activities could extend to elucidating a foreign country's position on a contested issue, such as China's on the disputed South China Sea territories.

Human rights bodies, charities and activist groups would have to disclose detailed information about their activities and relations with any foreign person or group.

University researchers, who discovered, for example, a new medical test, could be forced to register if they received funding from an overseas university and advocated for the test's inclusion on the Medicare benefits schedule.

By contrast, exemptions are made for religious, mainstream media reporting and commercial activities, thus shielding churches, media proprietors and the corporate elite, along with its highly-paid lobbyists.

Electoral and other agencies would have intrusive powers, including to demand access to documents or information, with criminal offences for non-compliance.

It would be a criminal offence, punishable by seven years' imprisonment, to fail to register under the scheme. Penalties of up to five years would apply for failing to provide information, providing false or misleading information or destroying relevant records.

Alongside this scheme, the Electoral Legislation Amendment (Electoral Funding and Disclosure) Bill would ban foreign donations for all political campaigns and expand the current anti-democratic party registration regime to cover "third party campaigners."

The existing electoral registration scheme forces political parties to hand over membership lists, meeting details and financial records to the state. It subjects them to constant complex, invasive and costly reporting requirements, and provides fertile pretexts to re-register parties or railroad their leaders to jail for alleged rule breaches, as was done to Pauline Hanson and her right-wing populist One Nation in 2003.

The corporate media has depicted the extension of these measures as being directed primarily against GetUp!, a reformist lobby group, but they have wider implications for fundamental legal and democratic rights. All political "campaigners" would have to report their directors' names, political membership and the details of government grants and contracts received.

In addition, political parties, candidates, Senate groups and "political campaigners" would be banned from receiving foreign gifts over $250, or any money transferred from foreign accounts. On the reactionary pretext of preventing "foreign interference," the financial reporting regime would provide another layer of state surveillance over all political activity.

To be continued