

Australian High Court rubber stamps sweeping “foreign interference” laws

Mike Head
17 May 2021

Australia’s supreme court last week issued a brief unanimous ruling, written jointly by all seven judges, flatly dismissing the first legal challenge to reactionary “foreign interference” legislation introduced in 2018.

The verdict, issued against a former Labor Party policy adviser, further demonstrates the anti-democratic character of the laws, which were imposed by the Liberal-National government with the Labor Party’s wholesale backing.

Introduced under intense pressure from Washington to set a global lead for the adoption of such measures, the legislation potentially outlaws any opposition to the escalating US-led preparations for war against China.

As the WSWs has warned, the legislation also is a far-wider attack on free speech. Never before has it been a crime, punishable by up to 20 years’ imprisonment, to work with an overseas group or individual to seek political change, whether on issues relating to war, the environment, refugees, social inequality or any other political questions.

Most immediately, the High Court’s judgment clears the way for the Australian Federal Police (AFP) to pursue a much-publicised investigation into John Zhang, a Chinese-born Australian citizen, who is accused of “recklessly” seeking to influence Australian politics on behalf of the Chinese government.

The verdict also sets a precedent for police raids and seizures against anyone linked to China or anti-war views.

Zhang had asked the court to quash three search warrants allowing the AFP to access his social media chats on phones and other devices that were seized by AFP and Australian Security Intelligence Organisation (ASIO) officers during raids on his home and business last June. Zhang objected that the warrants were too broad and vague, and violated an implied constitutional freedom of political communication.

In rejecting his case, the court adopted a sweeping

interpretation of the term “covert” in the legislation, which prohibits alleged “covert or deceptive” conduct seeking political influence.

The judges accepted the Morrison government’s argument that “a choice to communicate using an encrypted social media platform can answer the description of ‘covert’ in some circumstances,” even though “the Attorney-General was disinclined to be definitive as to when those circumstances might exist.”

This opens the way for prosecutions of people just because they communicate political views via encrypted phones or social media platforms, which are used by millions of people for privacy reasons.

The judges agreed with the government that the word “covert” is “sufficiently generic to cover concealment of different things from different people through the adoption of different guises.”

Having abruptly reached that sweeping conclusion, the court said it would dismiss Zhang’s challenge without even considering his other main argument, that the legislation breaches the implied freedom of political communication.

This underscores the fact that the 1901 Australian Constitution contains no bill of rights, or any guarantee of free speech. Even the limited “implied” freedom has been further eroded by the ruling, on top of earlier High Court judgments endorsing the sacking of a federal public servant for criticising—even anonymously—the country’s brutal refugee detention regime, and permitting the banning of the distribution of leaflets in public places.

Last June, amid a blaze of prejudicial media headlines about “Chinese agents” being uncovered in Sydney, the AFP also raided the home and parliamentary office of New South Wales (NSW) state upper house Labor MP Shaoquett Moselmane, for whom Zhang was working as a part-time staff member.

Then Attorney-General Christian Porter personally

authorised the raids, exposing the involvement of Prime Minister Scott Morrison's government at the highest levels.

In line with the escalating demonisation of China, the Labor Party backed the operation, forcing Moselmane to stand aside from the party and parliament for months. He was only permitted to return after the AFP indicated that he was not the target of its investigation.

As yet, Zhang has not been charged with any offence. But the warrants alleged that he and undefined other people had acted on behalf of the "Chinese state and party apparatus" by "providing support and encouragement to [Moselmane] for the advocacy of Chinese state interests."

The High Court gave equally short shrift to Zhang's other objection, that the warrants were unclear in identifying which foreign power's interests he had allegedly advanced. The judges dismissed that argument as "untenable," declaring that each warrant identified "the foreign principal as the Government of the PRC [People's Republic of China]."

The precedent set by the ruling is all the more chilling because the warrants referred to Zhang being "reckless" as to whether his conduct would influence Labor policy positions and the views of voters on the Chinese government. That offence of "reckless foreign interference," punishable by 15 years' imprisonment, illustrates the far-reaching scope of the legislation.

The law defines "reckless" as simply being "aware of a substantial risk" that the "influence" would occur and knowing it was "unjustifiable to take the risk." In other words, people can be convicted without even intending to influence a political outcome.

The warrants enabled the AFP and ASIO officers to seize material they believed was relevant to the "reckless" offence, and copy information from mobile phones and other electronic devices. They extracted data by using passcodes that Zhang was compelled to provide.

Neither Zhang nor Moselmane had been "covert" in making public statements regarding China. Moselmane, as deputy president of the NSW state parliament upper house, had praised Chinese President Xi Jinping's decisiveness in response to the COVID-19 pandemic.

As Moselmane later pointed out, similar opinions had been voiced by the World Health Organisation and initially by US President Donald Trump.

Moselmane, a Muslim MP who represents an area of Sydney with a large Chinese population, also made speeches, some in state parliament, calling into question Australia's alignment behind the intensifying US

confrontation with China, and opposing the foreign interference laws.

The allegedly "covert" communications consisted of a discussion group on WeChat, which reportedly mostly consisted of sharing articles, speeches, jokes and memes. People around the world use WeChat.

The continued pursuit of Zhang thus opens up to prosecution people who express anti-war views, oppose the foreign interference laws or criticise US and Australian government attempts to divert attention from their own catastrophic responses to the pandemic by falsely accusing China of letting the coronavirus loose on the world.

The Labor Party has been in the forefront of the anti-China offensive since 2010, when US "protected sources" in the party's leadership executed a backroom coup to install Julia Gillard as prime minister. She aligned the country completely behind the Obama administration's anti-China "pivot to Asia."

That was one of many such US political interventions over decades, underscoring that the real source of "foreign influence" in Australia is US imperialism, which is now intent on preventing China from ever challenging its post-World War II global hegemony.

Increasingly, Australia's people have been placed on the frontline of the conflict with Beijing. But concerns exist in Washington about popular anti-war sentiment, and the dependence of sections of Australia's wealthy elite on iron ore, gas and other exports to China. Hence police operations are being used to send a threatening message not to deviate from the pro-US commitment.

The AFP-ASIO operation against Moselmane and Zhang itself served to escalate tensions between Australia and China. Federal agents, including the Australian Border Force, accessed the communications of Chinese diplomats, in violation of international law.

Three Chinese journalists who were allegedly part of a WeChat group with Zhang left Australia last June after being questioned by ASIO. The government also cancelled the visas of two Chinese scholars and exacerbated the resulting diplomatic crisis by evacuating two Australian journalists from China to avoid a Chinese police investigation.



To contact the WSW and the Socialist Equality Party visit:

wsws.org/contact