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 posted yesterday. 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 a “foreign principal.”

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

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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 the prior 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

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