

Australia's new "foreign interference" laws: A threat to anti-war dissent

By Mike Head
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At the core of the two anti-foreign influence bills that the Australian government and the opposition Labor Party jointly rammed through parliament on June 28 are "foreign interference" offences that are unprecedented in Australia and other supposed democracies.

In an increasingly globalised world, the "interference" provisions attack and criminalise the very concept of cooperative political activity with overseas or international organisations. This is an assault on fundamental democratic and legal rights.

The Espionage and Foreign Interference (EFI) Act, now in operation, inserts a new Division 92 into the federal Criminal Code. Entitled "Foreign interference," it contains seven far-reaching offences.

This is on top of the expansion of an array of existing offences, such as treason, sabotage, advocating mutiny and breaching official secrecy, to broaden their potential use to outlaw dissent and anti-war activity.

Never before has it been a crime, punishable by up to 20 years' imprisonment, to collaborate with an overseas group or individual to seek political change, whether on environmental, refugee, geo-strategic, anti-war or any other issues.

These laws have been introduced directly at the behest of the ruling establishment in Washington in order to combat China's rise and help demonise and suppress opposition to preparations for war against China. Needless to say, the laws will not be directed against the US, which wields by far the greatest "foreign influence" in Australia.

As the US business publication *Bloomberg* reported: "Australia is set to become the first developed country to pass sweeping laws against foreign interference, in a move aimed at reducing Chinese meddling in national affairs and seen as the inspiration for legislation introduced in the US Congress."

Over the past year, while the capitalist media produced sensationalised reports of "Chinese meddling" in Australia, a full press was applied by US political, military and intelligence representatives.

- Leading US figures, including ex-Director of National Intelligence James Clapper and former presidential candidates Hillary Clinton and John McCain, visited Australia last year, urging the passage of the legislation.

- Members of Australia's Parliamentary Joint Committee on Intelligence and Security, which reviewed and finalised the bills, were given closed-door intelligence briefings in Washington. They included committee chairman, Andrew Hastie, a former SAS commander, from the governing Liberal-National Coalition, and the Labor Party's shadow foreign minister Penny Wong.

- Proponents of the legislation were invited to testify before US congressional committees, depicting Australia as a frontline state in a battle against Chinese "influence." Among them was Professor Clive Hamilton, a Greens member who this year produced a book, *Silent Invasion*, accusing China of seeking to take over Australia.

There is no possibility that the agents of this US "interference," both overt and covert, will be prosecuted. Instead, the new laws provide vast scope to intimidate, harass and imprison people who are linked to China or whose political campaigns allegedly harm the interests of Australian capitalism and its US allies.

The language is sweeping. The primary offence of "intentional foreign interference" outlaws conduct "on behalf of, or in collaboration with, a foreign principal," that is intended to:

(1) "influence a political or governmental process" or (2) "influence the exercise" of an "Australian democratic or political right or duty" or (3) "support intelligence activities of a foreign principal" or (4) "prejudice Australia's national security."

The definition of "national security" has been broadened from matters of military defence to include "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."

That potentially covers international campaigns against Australia's "border protection" regime of militarily repelling refugee boats or indefinitely incarcerating asylum seekers on remote Pacific islands, and any globally-connected activity that harms the profits and predatory interventions of the Australian ruling class and its US partners.

“On behalf of” and “in collaboration with” are not defined. “Collaboration” could cover consultation, information-sharing, coordination, or even online communication. Thus, campaigning against Australian involvement in a US-led military intervention could be outlawed if contact were made with an organisation in the targeted country.

“Foreign principal” is defined to include not just governments and government-controlled enterprises, but also “foreign political organisations” and “foreign political parties.” As a result, a member of an organisation engaged in globally-coordinated political action could be jailed.

The definition has particular consequences for any dealings with China, where there is a measure of state control over many institutions and economic enterprises. Accusations of collusion could be used to criminalise relations with a broad range of Chinese cultural and educational bodies.

One potential target is former Foreign Minister Bob Carr. He is currently director of the Australia-China Relations Institute, a University of Technology, Sydney, think tank that has been critical of the government stance toward Beijing. For simply communicating with a Chinese university over such a criticism, he could be prosecuted for “collaborating with” a “foreign principal” to “influence a political or governmental process.”

The definition covers international organisations, even the UN. The bill’s official explanatory memorandum states 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.

“Influence the exercise” of a “democratic or political right or duty” could include supporting a global boycott campaign or organising counter-protests against anti-China demonstrations.

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

The government’s explanatory memorandum states: “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.”

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 protect one’s privacy, and that of others, has potentially become a serious offence.

When the other main law, the Foreign Influence Transparency Scheme (FITS) Act commences next year, simply failing to list on the government’s foreign influence register could constitute being “covert.”

Another offence applies where a person is merely “reckless” as whether their conduct would influence a political issue or affect “national security.” For that, the penalty could be 15 years’ imprisonment. “Reckless” means just being aware of a

“substantial” and “unjustifiable” risk that the influence could occur or that the conduct involves being “covert.”

A further offence, carrying up to 10 years’ jail, punishes “preparing” to commit a foreign interference offence, even if no such conduct occurs. This is similar to provisions in the “anti-terrorism” legislation imposed since 2002. “Preparation” extends criminal liability to discussing a possible act, going far beyond the existing Criminal Code provisions covering attempting, aiding or conspiring to commit an offence.

According to the explanatory memorandum, “preparing” can include “acts to conceive” an “idea” for an offence.

Another group of “interference” offences, also intentional or “reckless,” cover providing “material support” or receiving funds from, a foreign intelligence agency. Recklessness could apply, for example, to someone who was unwittingly used by an intelligence agent, or an intermediary, to do something.

A presumption against bail applies to people charged under all these provisions. If a person convicted of any offence is a dual citizen, the home affairs minister can revoke their Australian citizenship.

Unlike some other provisions in the EFI and FITS acts, there are no exemptions, even limited, for journalists, charities or arts organisations. Labor claimed to secure a “protection:” the attorney-general must personally authorise prosecutions. However, that does not stop a person being arrested, charged, detained and denied bail while the attorney-general considers such a decision.

The involvement of a senior government minister only makes political victimisation more likely. That was demonstrated by Attorney-General Christian Porter’s recent authorisation of a prosecution under the Intelligence Services Act. Both a former intelligence officer and his lawyer face imprisonment for exposing Australia’s spying operation in 2004 against East Timorese ministers, during talks over disputed oil and gas rights in the Timor Sea.

When Prime Minister Malcolm Turnbull first introduced the bills last December, he claimed they were aimed against only activities that were “covert, coercive or corrupt.” But long-standing crimes such as espionage, blackmail and bribery already cover such activities.

The only conclusion that can be drawn is that the ruling capitalist elite, fearful that rising social discontent will intensify as the US-led drive to war escalates, is once again making preparations for wartime-style political repression.

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