

WATCHING BRIEF: WB 18-3 FOREIGN INFLUENCE

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

July 2018

Three pieces of legislation have recently been through Federal Parliament, dealing with concerns about controlling foreign influence in Australia on the democratic process. This Brief outlines the three, and summarises their progress through Parliament in response to considerable opposition and amendment.

1. Foreign Influence Transparency Scheme Bill 2017 (Passed both Houses, 28 June 2018)

Introduced with the Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017, the bill establishes the Foreign Influence Transparency Scheme to: require registration by certain persons undertaking certain activities on behalf of a foreign principal; require registrants to disclose information about the nature of their relationship with the foreign principal and activities undertaken pursuant to that relationship; place additional disclosure requirements on registrants during elections and other voting periods; establish a register of scheme information and provide for certain information to be made publicly available; provide the secretary with powers to obtain information and documents; and establish various penalties for non-compliance with the scheme.

The Joint Standing Committee on Intelligence and Security examined the legislation and received submissions and held hearings. As a result it made 52 recommendations, all of which were accepted by the Government. The recommended changes are intended to:

- Emphasise that the legislation applies to 'foreign government related activity or individuals' and involves activity intended to influence political processes.
- Exempt broadcasters and publishers who edit foreign information from registration.
- Extend the time during which former Cabinet ministers, senior officials and advisers have restrictions on their activities.

- Exempt humanitarian aid, religious and charitable organisations and some professional, business and commercial activity, arts bodies and industry associations.
- Exempt MPs and Senators engaged in their normal duties and encourages the adoption of a separate code of conduct for them.
- Require the Attorney-General's Department to provide detailed advice on records to be kept and on how privacy is to be protected; and to prepare regular reports on work done under the Scheme.
- Reduce some of the original penalties under the Scheme.

2. National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 (Passed both Houses 28 June 2018)

Amends: the Criminal Code Act 1995 to: amend existing, and introduce new, espionage offences relating to a broad range of dealings with information, including solicitation and preparation and planning offences; introduce new offences relating to foreign interference with Australia's political, governmental or democratic processes; replace the existing sabotage offence with new sabotage offences relating to conduct causing damage to a broad range of critical infrastructure that could prejudice Australia's national security; introduce a new offence relating to theft of trade secrets on behalf of a foreign government; amend existing, and introduce new, offences relating to treason and other threats to national security, such as interference with Australian democratic or political rights by conduct involving the use of force, violence or intimidation; introduce a new aggravated offence where a person provides false or misleading information relating to an application for, or maintenance of, an Australian Government security clearance; eight Acts to make consequential amendments; the Crimes Act 1914 and Criminal Code Act 1995 to replace certain existing, and introduce new, offences relating to secrecy of information; 20 Acts to make consequential amendments; the Telecommunications (Interception and Access) Act 1979 to amend the definition of a 'serious offence' to include the offences provided for by the bill; and the proposed Foreign Influence Transparency Scheme Act 2017 to amend the definitions of 'electoral donations threshold', 'general political lobbying' and 'political or governmental influence'.

The Joint Standing Committee on Intelligence and Security examined the legislation and received submissions and held hearings. As a result, it made 60 recommendations, all of which were accepted by the Government. The recommended changes are intended to:

- Clarify that 'prejudice to national security' does not include embarrassment alone and must include harm.
- Accept conduct that is mutually beneficial to the security of Australia and another country.
- Clarify the definitions of 'espionage', 'sabotage', 'political violence', 'foreign interference', 'security classification', and 'foreign political organisation'.
- Make explicit the criteria used to determine criminal conduct and to assess harm done to Australia's interests.

- Set limits on secrecy levels in line with Law Reform Commission standards.
- Enable journalists and news media to defend themselves against penalty for reporting news and current affairs.
- Reduce maximum penalties under the legislation.
- Seek closer analysis of compatibility of the legislation with human rights standards.

3. Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017 (passed House and now before Senate) *

Amends the: Commonwealth Electoral Act 1918 to: establish public registers for key non-party political actors; require non-financial particulars, such as senior staff and discretionary government benefits, to be reported; prohibit donations from foreign governments and state-owned enterprises being used to finance public debate; require wholly political actors to verify that donations over \$250 come from an organisation incorporated in Australia, or with its head office or principal place of activity in Australia, or an Australian citizen or Commonwealth elector; prohibit other regulated political actors from using donations from foreign sources to fund reportable political expenditure; limit public election funding to demonstrated electoral spending; amend the enforcement and compliance regime for political finance regulation; and enable the Electoral Commissioner to prescribe certain matters by legislative instrument; and Referendum (Machinery Provisions) Act 1984 to make consequential amendments.

The Joint Standing Committee on Electoral Matters examined the legislation and received submissions and held hearings. As a result, it made 15 recommendations intended to:

- Modify the definition of 'political expenditure' to avoid affecting 'non-political' advocacy.
- Establish a Transparency Register including all entities that reach a minimum threshold of expenditure – a level set to reflect significant influence of electors.
- Require political parties to reaffirm their registration prior to each election.
- Warn agencies with deductible gift recipient (DGR) status that their status will be removed if they donate to another organisation (in breach of DGR requirements).
- Reduce the penalties in the legislation.
- Fund education campaigns by the Electoral Office and Charities Commission amongst their client organisations.

The Government has not yet indicated its response.

*This Bill was the subject of an *Action Alert* in January 2018 (AA 18-1).

Analysis/Response

It seems clear that the substantial concern aroused by these bills has led the MPs and Senators on the relevant committees to be very thorough in assessing the draft legislation and making important improvements that reduce the threat to civil liberties and advocacy to some extent. The all-encompassing nature of the drafts has been modified to reduce the scope of the legislation and refine the definitions and prohibitions, and place more limits on the power of Ministers in exercising their discretion. There are likely to be test cases on some elements of the legislation to clarify these powers in the coming days, especially in relation to the protection of journalists and whistleblowers.

The Law Council of Australia said (26 June) that the amendments to the Foreign Influence Transparency legislation “largely reflected the serious concerns raised by the Law Council and others, particularly the charity sector” and that the changes were a “vast improvement”.

Get Up (8 June) spoke of the Espionage legislation, even as amended, as a “grave threat to our democracy” and fails to protect journalists and civil society organisations. It believes that instances where Australia breaches international law (e.g. the treatment of asylum seekers) will go unseen and unpunished.

The Australian Council for Overseas Aid (ACFID) (9 April) welcomed the changes suggested to the Foreign Donations Bill as ‘positive and constructive’ but still did not protect civil society’s right to use international philanthropy for advocacy for human rights, poverty alleviation or wildlife conservation.

James Elton-Pym (SBS News 29 June) reported that under the original Espionage bill, journalists could have faced criminal prosecutions merely for possessing classified information, even if they did not publish it. The amendments created a legal defense for reporting in the “public interest”. But a defence is not the same as an exemption. It gives reporters a defence to use in court but does not protect them from prosecution in the first place.

Charity groups also welcomed the amendments, but some in the sector still hold concerns. “By making it a crime to hold the Australian government to account on human rights, this bill will help shield government from accountability,” Amnesty International’s Claire O’Rourke said. “These draconian laws proposed will make Australia more like the authoritarian countries this bill is supposed to protect us from.”

Quaker Perspectives

As a general principle, the Quaker Peace and Legislation Committee (QPLC) sees it as a goal of public policy that individual Australians are able to enjoy the greatest possible freedoms compatible with the needs of others. Any move that reduces those freedoms needs to be examined carefully in order to ensure that it does not undermine democratic rights and responsibilities.

The Committee considers that the passage of more than 40 pieces of 'security legislation' since the 2001 attacks on the USA has placed significant impediments on individual freedom by giving unprecedented powers to ASIO and the Australian Federal Police. As a result, the criminal justice system is at risk of being subordinated to 'national security' concerns which are ill-defined.

So long as Australia does not have a national Bill of Rights, many individuals and groups are likely to be concerned that their rights will not be adequately protected under such legislation. This means that, from our perspective, any legislation needs to be more carefully scrutinised for its human rights impact.

The latest legislation has added a further dimension to the public debate, with its focus on Australia's links with other countries and what implications flow for influence on our political processes. Whilst the US has long been closely involved in the Australian political scene, the growing role of China as a global power, alongside greater awareness of the internet's potential for manipulation, has raised anxieties among some Australians about whether we are at more risk from foreign influence.

Friends are encouraged to consider whether further advocacy to challenge the first two pieces of legislation, and to amend the third, are appropriate, perhaps in cooperation with other concerned citizens.

Canberra
July 2018

Sources and References

Joint Parliamentary Committees – see www.aph.gov.au/Parliamentary_Business/Committees
Get Up – www.getup.org.au/media/releases/2018/06
ACFID – www.acfid.asn.au/media-releases/foreign-donations-bill-dud
Law Council of Australia – www.lawcounil.asn.au/media/media-releases