

Threats to Australian democracy are closer to home than China

By David Neal

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Foreign Minister Marise Payne and Defence Minister Linda Reynolds are holding face-to-face talks in Washington DC this week with their US counterparts Mike Pompeo and Mark Esper. Ahead of the talks, the ministers have announced they will be dealing with key security issues in our region, including the threat that Australia may be exposed to disinformation campaigns designed to undermine democratic systems.

They say that this threat will be defeated because "our liberal democratic values such as free speech and a free press" and "our commitments to open political systems, robust political contestability and the rule of law will underpin our national resilience".

Specifically in relation to China, they point out that, "sweeping and vague 'national security' legislation imposed on Hong Kong has undermined the rights, freedoms and futures of millions of people".

There can be no doubt about the great threat posed to Hong Kong by China, China's attempts to exert influence in the region and generally the rise of authoritarianism. And we should – as the ministers say – be confident that our liberal democratic values and the rule of law are the sure protection against the threats we face.

But a series of recently passed or pending measures in the Commonwealth Parliament give rise to concerns about our own, home-grown authoritarianism. They include a roll out of facial recognition technology, forcing technology companies to decrypt information held on their customers' computer systems, forcing technology companies to provide access to their customers' cloud-based information without notification to the owner of the information and extending ASIO's compulsory questioning powers. These measures raise serious questions about the border between citizens and government, but the ASIO Bill is particularly worrying.

Unlike any of the other Five Eyes countries – United States, Canada, the United Kingdom and New Zealand – in the wake of September 11, ASIO was given power to compulsorily question people for up to seven days in relation to terrorism offences.

While it might be accepted that the extreme violence associated with terrorism offences justifies extraordinary powers – extreme violence at least offers a bright line border around these extraordinary powers. That certainly cannot be said about the "sweeping and vague" definitions used in this bill to trigger the compulsory questioning power: dealing with information which prejudices Australia's "political, military or economic relations with another country"; or activities in collaboration with a foreign power which are clandestine or

deceptive and are "detrimental to Australia's interests". It is hard to imagine more "sweeping and vague 'national security' legislation" than this.

ASIO would be allowed to compulsorily question anyone about these things – not just suspected offenders. This includes journalists, business people, university academics and staff, lawyers, citizens, residents and visitors. ASIO would simply have to show the questioning would "substantially contribute to the collection of intelligence" about foreign interference, which seems to be the main target of the bill. The person could then be questioned for up to 40 hours (not including breaks). If the person refused to attend, they would be arrested. Refusal to answer or giving false or misleading answers would carry a maximum five year sentence. Rules that are fundamental in our legal systems – indeed protected by the constitution in the United States – are overturned by this bill. People – including people already facing charges – will be compelled to provide evidence that may then be used to prosecute them. They could have a lawyer present, but the lawyer would be confined to clarifying questions that were ambiguous or unclear.

The new bill transfers the decision to issue a questioning warrant from a judge to the Attorney-General. As pointed out by the Inspector-General of Intelligence and Security, this "departs from the trend for increased requirements for external authorisation in other Five Eyes jurisdictions". It also breaches the separation of powers principle that courts scrutinise the actions of executive government.

The new bill also proposes to expand the questioning power to children who are at least 14 years old, but only to those engaged or likely to engage in activities prejudicial to the protection of Australia and people from politically motivated violence.

Even if our intelligence agencies were the best in the world, conferring a power to compulsorily question anyone about information which "prejudices Australia's economic relations with another country", or activities which are "detrimental to Australia's interests" is beyond the pale.

We stand alone. No other Five Eyes country goes so far, not even for terrorism offences. Genuinely liberal democracies guard against authoritarian measures. The conduct of our security agencies in relation to the bugging of the East Timor parliament, the trials of Witness K and Bernard Collaery, the secret trial and imprisonment of a former intelligence officer, the recent search warrants executed on two journalists, and the prospect of charges against one of them in relation to stories on suspected murders by Australian soldiers in Afghanistan show why we should not be lowering our guard.

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