Submission to the Parliamentary Joint Committee on Intelligence and Security

Inquiry into the National Security Legislative Amendment (Espionage and Foreign Interference) Bill 2017 and the Foreign Influence Transparency Scheme Bill 2017.

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I welcome the opportunity to provide this submission to the Committee. The two Bills under consideration offer a critical opportunity for Australia to address some major vulnerabilities in our national security and thus help safeguard our interests and sovereignty at a time of growing uncertainty and risk in the international environment. My judgements in this submission are offered in a personal capacity.

I fully appreciate that there are contending values, interests and political imperatives at play, which Parliament must take into account in considering these Bills. That said, it is important, in my view, that in considering the range of potential difficulties with the Bills, our Parliamentarians not lose sight of the worsening national security situation that has brought us to this point. Foreign interference, specifically from the authoritarian Party-State that is the People’s Republic of China (PRC), is a real and pressing challenge to Australia’s democratic institutions and foreign policy independence.

Moreover, as an accumulation of credible media reporting has underscored, the influence of the Chinese Communist Party (CCP) in Australia poses risks not only to our national security, but also to the civil liberties of a part of the Australian population – those Australians of Chinese origin who seek to avoid the direction or influence of the CCP. How we respond to foreign interference in Australia is thus not solely a national security issue. It is a fundamental test of Australian social inclusiveness, cohesion, equity and democracy that we ensure all in this country have freedom of expression, freedom from fear, and protection from untoward intervention by a foreign power. Many of the submissions seen so far by the Committee seem to have paid insufficient attention to that key issue.

None of this is to deny the importance of maintaining mutually respectful and beneficial
relations between Australia and China. Indeed, the bilateral relationship will benefit in the long run if both nations can engage under conditions of confidence, predictability and security, in which the temptation to pursue covert influence and interference have been minimised. Excessively pre-empting Chinese Party-State sensitivities on these issues now will make future efforts to protect Australian interests and values more difficult and more disruptive to the stable bilateral relationship we all want.

**PRC influence and interference in Australia: Motivations**

The PRC has some very specific reasons to seek to influence Australia. These arise in large part from the fact that the interests of the Chinese state and the authority of the CCP are intrinsically linked.

Under Xi Jinping, the legitimacy of the party's tightening authoritarian rule – and indeed the leader's own cult of personality – are becoming measured by China's ability to meet the ambitious and nationalistic foreign and security policy goals it has set itself. This is partly about “regaining” Taiwan, potentially by force, extending control over Hong Kong, maintaining firm control of Tibet and Xinjiang, and pushing back America's influence and alliance protection from China's eastern neighbourhood, which also includes Japan, the Korean Peninsula and independent south-east Asian countries.

Globally, the mission of the “rejuvenation” of the Chinese nation has also been identified with Chinese pre-eminence in economic weight and advanced technology as well as influence over Chinese diaspora communities. Regionally, there are growing signs that China also broadly seeks nothing short of strategic pre-eminence in Asia, with military, economic and diplomatic dimensions. The vast region of the China’s leadership’s signature “Belt Road Initiative” – especially the so-called Maritime Silk Road, encompassing Southeast Asia and the Indian Ocean – is one where China wants to minimise any military challenge to its expanding economic, energy and political interests.

In all of this, China seeks to eliminate pushback from others by preventing their solidarity with the United States or with one another. Australia is a key country China needs to influence in this regard. It may not be realistic to break the US alliances in the region but Beijing will keep trying to weaken them, augmenting military means with political ones. The region is now in a phase of accelerating strategic rivalry, and it makes sense for China to try to neutralise Australia as a diplomatic competitor and critic at every turn. Were Australia to
privilege China’s preferences on matters such as its territorial disputes with Japan, India and south-east Asian countries, or over human rights and governance issues, other small and medium powers could follow; the ripples would be global, and China would move closer to achieving major strategic objectives at the expense of the interests of others. It is thus fair to conclude that China sees Australia as a country whose strategic choices it places a significant priority on influencing. Australia is a strategic bellwether.

Australia is also a bellwether nation in how it handles the domestic dimension of Chinese power and protects the freedoms of its own Chinese community. The legitimacy of China's authoritarian system depends – in significant part – on its ability to stop dissent, including among Chinese communities overseas. Australia has a large and diverse Chinese community, a cherished and growing part of what this country has achieved as a multicultural society and a successful economy. Australia is also a sanctuary for freedom of expression for all who live here. That is core to our national identity. Allowing that freedom of expression to persist could be seen by the CCP as an example to other Chinese communities and a risk, however seemingly small, to the Party’s (and Xi’s) long-term authoritarian grip on power.

A fourth reason is the potential to use Australia as a place to obtain intelligence secrets and intellectual property (including scientific research) that may enable the PRC to attain a military and economic edge over the United States, its allies and partners. Some of this information is held by the Australian Government and the Australian Defence Force; some is held within private companies; and some is potentially embodied within academic research.

To sum up, the PRC thus has a strong interest in influencing Australia for at least four reasons. First, Australia is an important US ally. Second, Australia is an outspoken and independent power in the Indo-Pacific, whose criticism of and resistance to China is noted and potentially followed by others. Third, Australia is home to a large Chinese community that Beijing wishes to see as largely pro-PRC in its attitudes, or otherwise silent and passive on matters relating to the interests of the Chinese Communist Party. Fourth, Australia has intelligence, military and technological information that the PRC wants as part of its quest for an edge over the US and others in the region and globally.

To pursue these objectives of exerting effects on Australia’s and other nations’ foreign policies and internal affairs, the PRC has various (sometimes overlapping) levers of power and influence. These include the People’s Liberation Army, the Ministry of Foreign Affairs, the Chinese intelligence services (notably the highly effective intelligence apparatus of the
Ministry of State Security), the Communist Party itself (noting that the State and the PLA are essentially in the service of the party), the Chinese People’s Political Consultative Conference (CPPCC) and the United Front Work Department (UFWD), a platform long used to mobilise wider support for the Party/PRC including among Chinese communities overseas. The United Front Work Department makes no secret of its mission to co-opt the widest range of voices and win the narrative battle for China in other countries.

Dimensions of PRC influence in Australia
My career across diplomacy, intelligence analysis, think tanks and universities has sensitised me to what Australian intelligence analysts and policy officials would consider unusual or noteworthy when assessing the activities and statements of states and non-state actors when they interact with Australian interests, and it is in that context that I have formulated my assessments.

I consider the widespread media interest in these matters to be an important contribution to improve public debate and awareness of issues related to foreign influence and interference in Australia’s domestic affairs. Foreign interference is an area of priority concern for national security officials in Australia and many other countries. Australia and other democracies are entering new territory in terms of their vulnerability to foreign influence.

There is an associated need to ensure that national capabilities and legislative instruments are suited to a challenge that has evolved rapidly alongside the benefits of greater connectedness between societies and economies, such as Australia and China. The 2016-2017 ASIO Annual Report and associated public remarks by the ASIO Director-General and other senior ASIO staff are an indication of the seriousness of the concerns that are held on the basis of material collected and assessed by Australia’s highly professional intelligence community.

Over the past few years, ASIO has signalled a greatly increased threat to Australia’s interests from foreign interference and espionage. It is reasonable to conclude that much of this is from entities and individuals associated with the PRC. Russia’s interference in the 2016 American presidential election may be the most brazen assault by an authoritarian power on democratic institutions, but it is certainly not the only example of such activity. Democracies everywhere are finding themselves at risk. Authoritarian powers are using the very virtues and strengths of democratic societies – our openness, our willingness to engage
with talent from all over the world, our reliance on information technology – to influence and weaken us. I should emphasise how extraordinary and welcome it is that ASIO has given clear public indications of its levels of concern about unprecedented foreign interference and espionage, including through sanitised case studies. This kind of transparency is welcome and we need more of it from the national security community if the public is to understand the gravity of the situation.

There are multiple responses democracies should consider to the heightened threat of foreign interference, which it itself is redefining the very meaning of national security. In terms of diplomacy, it is time for democracies to join together, to exchange insights, intelligence and best practices on how to build resilience against foreign interference. For instance, the experience in Canada of developing a ministerial portfolio for democratic institutions and their protection is worth studying and possibly emulating. We should also move expeditiously to refine and pass legislation to ban foreign political donations and ensure real-time transparency for all political donations. That way, all citizens can promptly see the reality of who is paying for electoral campaigns and thus deduce donors’ motives – not after they vote, but before. In addition, legislation relating to new forms of foreign interference and espionage needs to be updated in response to contemporary realities. Many democracies are currently studying each other’s approaches in this regard. The Australian response will be globally significant. Australia’s seriousness of purpose and reliability as a security partner will be judged by other democracies, in part, on how we handle (or ignore) the foreign interference issue.

Here in Australia, we have seen the Chinese Communist Party and the UFWD involved in what appears to be a multifaceted campaign to influence our politics and independent policy-making. This includes propaganda and censorship in much of this nation’s Chinese-language media, as well as channels of interference through intimidation of dissident voices and the establishment and mobilisation of pro-Beijing organizations on Australian soil. There is also the troubling question of major political donations from certain individuals who are either of Chinese nationality or adopted Australian nationality with perceived deep and enduring links to the Chinese Party-State. The apparent decision by both major political parties in Australia to cease receiving such funds and to distance themselves from the donors has been prudent.
From information available in the public domain, it is not clear what is the precise calculation behind each such donation, and those calculations may vary from case to case. Several explanations are possible and it is plausible – and in my view likely - that donations have been made for a combination of these reasons. One explanation put forward of course is that those making donations want nothing in return other than perhaps some reputational benefit, and may be doing so out of admiration and respect for Australia’s democratic political system. I consider this motive to be unlikely.

A second possible reason is that this is partly about buying profile, status, access and indeed a kind of political “protection” for personal and commercial reasons. It is quite conceivable that this motive could operate in conjunction with the third motive outlined below. In other words, even if this is part of the reason for the donations, it does not preclude the more troubling third and fourth explanations below.

A third possible explanation is that donations are intended to support the objectives of the Chinese party-state but are essentially a case of patriotic and/or pragmatic freelancing, rather than at the specific direction of the Chinese Communist Party or the United Front Work Department. This is patriotically Chinese, insofar as it involves building a relationship that may be advantageous to China’s national interest in some future circumstance. It is pragmatic, in that making such a contribution to the interests of the PRC may resonate well with the Party and China’s leadership, to the reputational benefit of the donor (with flow on advantages for the donor’s standing and business interests in China). It is quite conceivable that this motive could operate in conjunction with the second motive outlined above: a kind of double insurance policy, building status and reputational benefits for the donor simultaneously in China and in Australia. This would not detract from the prospect that at some point in the future the donor could be expected by the PRC to make use of the donor relationship to elevate the interests of the PRC above – and at the expense of – those of Australia.

A fourth possible explanation is that donations are encouraged or directed by the Chinese Communist Party, perhaps through the United Front Work Department or another proxy, as part of specific and targeted efforts at building and exerting influence abroad.

It is a matter of public record the Director-General of the Australian Security Intelligence Organisation (ASIO) has taken the highly unusual step of directly warning the major parties
to be cautious about particular donations and donors. Given ASIO’s responsibility for countering espionage and foreign interference, such briefings and warnings need to be considered an indication of serious concern. It is reasonable to assume that such briefings would have drawn at least in part on intelligence investigations.

Given that foreign political donations are currently legal, security agencies cannot take effective action in such circumstances – all they can do is raise the alarm. On the donations issue, it is now up to the political class to decide whether there is within Australian democracy enough self-respect to function without money linked to the Chinese Communist Party. This, after all, is a massive, secretive, self-interested and foreign entity, with interests that can sometimes clash directly with Australia’s.

The questions of CCP influence and interference on Australian university campuses and in community organisations are dealt with at length elsewhere, including in the excellent research of Professor Clive Hamilton and Alex Joske, and I do not dwell on those in detail here. I commend the work of Professor Hamilton and Mr Joske, and would note the importance of ensuring that the Australian public has opportunity to to read Professor Hamilton’s forthcoming book in full and to form their own views accordingly.

Another disturbing aspect of the foreign interference problem involves attempts to silence outspoken Chinese-Australian voices. Consider the troubling case of Chongyi Feng, a highly regarded associate professor at the University of Technology Sydney, who was detained by Chinese authorities in March 2017 while on a visit funded by the Australian Research Council. Feng has identified his 10-day detention and interrogation as being an effort to “shut me down and set an example to dissenting views and critical voices among the Chinese diaspora and beyond.” This could be read as a signal of intimidation, telling Chinese-Australians not to criticize the Chinese Communist Party’s interference in Australian domestic affairs.

Professor Feng is an important voice – he demonstrates that it is not just Australia’s security agencies who are concerned about the Chinese Communist Party’s interference. Indeed, much of the worry about such influence emanates from within Australia’s diverse Chinese communities. If, as a nation, Australia chooses to ignore such concerns, it will be effectively treating such dissenting voices among its Chinese-Australian population as second-class
Australians, whose freedom of thought and freedom of expression do not warrant protection. That would amount to racism, and would be unacceptable in a self-respecting multicultural democracy.

In the media space there is also cause for concern. Several leading Australian media outlets have signed distribution deals with the Chinese Communist Party’s propaganda department. The Australian public can now enjoy censored and propagandist Chinese publications such as China Daily simply by looking at the attractive liftouts inserted into some of their most reputable metropolitan newspapers. To be fair, this is not especially effective propaganda. It may even be a waste of Chinese government money, given that these same newspapers continue to publish objective and critical investigations into Chinese influence-buying. But it is disturbing to think that, in time, the business model of Australia’s venerable quality press will be propped up by such funds and that sooner or later the directness and incisiveness of their China reporting may become muted. After all, the sudden withdrawal of such funding could become an act of leverage and coercion.

What is more hidden from the English-speaking Australian public, and more worrying at this stage for the country as a whole, is Beijing’s effort to control and shape overseas Chinese-language media. Additionally, the use of WeChat and Weibo by many Chinese speakers in Australia means that the Chinese Communist Party can censor what they are reading without having to own Australia-based publications at all.

What is exceptional here is not that China is seeking to engage with the more than one million Australians of Chinese origin. Engagement with a diaspora community is a normal and understandable thing for any government to do – Ireland does it, India does it, Australia does it, and China can and should too. What is extraordinary is the level of influence, sometimes manifested through intimidation, that the Chinese Communist Party has over Chinese-language media in Australia, a pattern identified by such respected Australian China researchers as Professor John Fitzgerald.

This is about silencing dissent. It is not ordinary soft power. All nations project the “soft” power of attraction – of winning the debate. We should welcome and indeed facilitate Chinese voices in a transparent and evidence-based contest of ideas about Australia’s future. But a picture is emerging of excessive influence through money, censorship and coercion.
This is neither the soft power of free expression nor the hard power of military force. Instead, as I have termed it in previous writings in mid-2017, it is the “sharp power” of intrusive influence. It undermines the principles of trust and mutual respect that are meant to inform worthy efforts by both nations, Australia and China, to build a durable and comprehensive relationship.

It is vital to underline at this and all junctures that criticism of influence by the Chinese Communist Party is not about ethnicity. We need to guard against any risk of this issue turning into one of suspicion or xenophobia directed generally at Australia’s Chinese communities. There needs to be reassurance given to Chinese-Australians that they are included, welcomed and cherished as integral to the social, political and economic fabric of this multicultural nation. Many Chinese-Australians are anxious about the role of the Chinese party-state inside Australia. They are also understandably worried about the harm the actions of a small number may do to the reputation of the Chinese diaspora in Australia, whether citizens, permanent residents or students.

So, the issue of foreign interference needs to be addressed in a context of respect for the rights of Chinese-Australians. This needs to be an issue that is seized and owned by the moderate, bipartisan centre of Australian politics. This way, the issue cannot be captured by extreme voices or be distorted, misconstrued or falsely portrayed as one of xenophobia. The Chinese-Australian community makes an enormous contribution to Australia and is the nation’s greatest asset in engaging with China. Prominent voices in this community are leading the pushback against Chinese Communist Party orchestration of influence within the media, in politics, society and on university campuses. In this context, suggestions that the government and the national security community are seeking to stoke “Sinophobic” suspicions about all Australians of Chinese origin are themselves false and divisive, and undervalue the views of those Chinese Australians, such as reflected in the Australian Values Alliance, who seek to preserve their freedom of expression. The interests and motivations of those making such allegations need to be taken into account. The real racial double standard in this debate is not the suggestion that Australia should protect itself from the interference of a foreign Party-State, but rather the implication that we should allow some Australians, on account of their ethnicity, to be less protected from foreign interference than others. If we begin considering one community as less deserving of Australian civil liberties than others, then where do we stop?
What is needed is honest bipartisanship on the foreign interference issue in Australia. This debate can easily be distorted or hijacked for partisan purposes or personal agendas, most particularly through projecting a false dichotomy between one major party as being allegedly “anti-China” and the other, by definition, as being more balanced and understanding in its approach to China. Such a narrative would create an opportunity for heightened foreign influence and interference. We saw a hint of such risk during the December 2017 Bennelong by-election. It would be harmful for Australia’s national interests for such a contrived and cynical polarisation of views on China to be injected into a future federal election campaign. We can assume that such a scenario would be ripe for exploitation by the UFWD and its associates. The prospect of such polarisation and interference is all the more reason for effective foreign interference laws to gain bipartisan support in a timely fashion. That does not, of course, mean that the Bills are perfect as currently drafted.

*Principles for effective legislation*

In my view, it is urgent and eminently reasonable to reform the law in a way that comprehensively reduces the nation’s vulnerabilities to foreign influence, interference and espionage. This requires a mutually-reinforcing set of legislative instruments covering political donations, the transparency of activities undertaking on behalf of foreign principals, and the criminalisation of acts of foreign political interference inimical to Australia’s security interests.

In framing such measures, it is essential to define *what* about foreign interference and influence counts as criminal, what is more in the realm of unacceptable diplomatic practice and what is merely a side effect of the many benefits of global and regional connectedness. The Bills as currently drafted go a considerable way towards reflecting such distinctions. It is also important to avoid collateral harm to the nation’s political life, freedoms and institutions, including the media and universities. Refinements to the present Bills should be possible to limit such perceived or actual collateral harm, such as the rights of academics transparently to conduct international dialogues and research collaboration and the rights of professional journalists to protect their sources and to report on national security issues in the public interest.

In conclusion, on the whole the Bills reflect the kind of legislation Australia urgently needs to
protect its national security from what ASIO has identified as an unprecedented set of threats of foreign interference and influence. At the same time, the Bills need suitable and early refinement to ensure they reflect a consistent respect for freedom of expression. This means ranking the political liberties of the diverse Australians of Chinese origin alongside, rather than beneath, those of the media, universities, charities, businesses and the other mobilised interests that have made their voices heard in the present consultative process.