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You might be committing espionage -but we won't prosecute you. Probably not.

“What is clear from the Joint Parliamentary Committee report issued last night in relation to the [National Security Legislation Amendment \(Espionage and Foreign Interference\) Bill 2017](#)”, says Kerry Weste, President of Australian Lawyers for Human Rights (ALHR), “is that much normal civil society activity may now be regarded as ‘espionage’ or otherwise criminalised because of the extreme width of the proposed new definitions of ‘national security’ and ‘foreign principal’ under the Bill. Civil society organisations will need, if they wish to continue business as usual, to rely on the assurances of both major parties that the Attorney General of the day will not prosecute them.”

“If this is the case,” says President Kerry Weste, “why not amend the legislation to say so? This is a profoundly unsatisfactory situation”. “Of particular concern” she adds, “is that the definition of ‘foreign principal’ includes the United Nations and its bodies and representatives, like Special Rapporteurs. Therefore if an organisation like ours makes a report to a Special Rapporteur about breaches of human rights in Australia, and that report has the potential to ‘prejudice’ Australia’s political or economic relations (both of which come under the broad definition of ‘national security’) then we have committed espionage under the proposed new section 91.2. Such measures are quite clearly problematic to the rules based international legal system.

“The Committee acknowledged these concerns” says Ms Weste, “but decided that if the UN was not included in the definition of foreign principal, then this would ‘incentivise foreign intelligence services to channel their espionage activities through such organisations’ (par 3.92). Exactly how this would be done through the UN is not explained and no consideration was given to a carve out for organisations communicating with, and not receiving directions from, international bodies, for example in the Special Rapporteur situation. On the face of it, such communications could in future involve penalties of up to 25 years in jail.”

“The Committee also ignored concerns about the breadth of new ‘foreign interference’ crimes in new sections 92.2 and 92.3 which cover not only covert foreign interference (subsection (1) of each section) but also completely open and above board relationships with foreign principals where no covert activity is involved (subsection (2) of each section). Inconsistently, foreign private companies are not included in the definition of ‘foreign principal’ and so activities on their behalf are not covered by the new foreign interference crimes. Foreign private companies are the ‘significant gap in the legislative framework that would be open to exploitation by foreign intelligence services’ says Ms Weste, “not the UN.”

“These measures diminish our democracy and provide neither a proportionate, necessary or reasonable response to the perceived harms the Government is saying it seeks to address.”

For more information see: <https://alhr.org.au/foreign-influence-legislative-package/>

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ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media

engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.