CCCA
Chinese Community Council of Australia
澳華社區議會

15 June 2018

Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra
ACT 2600

By email pjcis@aph.gov.au

Dear Mr Hastie,

Foreign Influence Transparency Scheme Bill 2017 (FITS Bill) and National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 (NSLA Bill)

We make this further submission on behalf of Chinese Community Council of Australia in response to your invitation to do so.

We provide comment as follows :

Chinese Australian community dialogue

We continue to communicate with various leaders and key members of the Chinese Australian community and certain key organizations about the content of these bills which are of significant concern to the Australian-Chinese community.

We remain resolute that these bills should not adversely affect any part of the normal legal activities of the Australian community. Unfortunately, as the bills are presently drafted, that does not appear to be the situation.

Our Community Concerns

We are concerned that the structure of these bills will disadvantage specific ethnic communities including the Australian -Chinese community because of historical, cultural, language and social connections between that community and entities in China, despite the general disengagement of the Australian-Chinese community from the past political reach of China through immigration, citizenship and integration.

Areas of particular concern in our community include:

- Academics who research, teach, publish and speak about Chinese economic, cultural and foreign affairs and related policies
- Organizations and their principals, directors and staff who are bridging the understanding between Australia and China and who are adept at shedding light on the pros and cons of the interplay of Australian, Chinese and US policies
- Cultural, community and business exchange groups who publish comments and papers about the aspects of foreign relationships between Australia and China on social and public media
- Advocates in the legal field whose work deals closely with large and small private, government and NGO clients based in China
- Media and any other individual or community organization that has Chinese connections and that has a level of economic, cultural and political expression.

We remain concerned and confused over the potential marginalizing under these bills of Australian-Chinese long term joint community capital and responsibilities, in particular where Chinese Australian citizens and residents are still regularly portrayed as less trustworthy by virtue of the "perpetual foreigner" syndrome.

Comments on amendments for these proposed Bills

These are interconnected pieces of legislation, as the government has acknowledged, containing overlapping content, which have serious implications for our community.

We have consulted about these bills with other submitting organizations representing a spectrum of community, business and civil society interests. We agree with a range of their opinions on FITS, including the proposed amendments recently issued, as listed below.

- Community sectors are not accorded "exemptions" whereas foreign businesses are now excluded from the definition of 'foreign principal' (a clear gap in the legislation) and industry sectors are provided with exemptions through the new section 29A. This lack of exemptions for cultural and community organisations fails to recognize the potential erosion of a community's rights and discourse which would occur should the bills be enacted in their proposed forms.
- Non - English political discourse is quite dynamic in the social media zone such as Weibo and Wechat. This space is parallel to legislation but it is unclear how the bills would apply to social media. It seems that this is another obvious 'gap' in the legislation.
- Section 11 (3) expands the causation and relationship aspects of the traditional foreign principal and agent relationship to add a new quasi - collaboration concept,

despite the basic concept of collaboration being deleted from section 11(1). This subsection overly widens the activity net of influence in relation to a political or government process or exercise of a democratic or political right.

- Whether the organization is deemed to be a "foreign" government-related entity is complex, especially in regard to management control, shareholder mix, place of registration, and real proximity of Australian legislative framework. The 15% rule is only an arbitrary guide. By including overt interference activities with covert activities, the bills effectively bring completely open and above relationships under the head of unlawful activity.

- Criminalizing foreign influence under these amendments remains of serious concern to the Australian-Chinese community; in particular, penalties such as 20 years or life imprisonment are totally disproportionate.

On the NSLA Bill, we hold the general view that certain key terms are too broad and undefined.

We refer in particular to the definitions of "National Security" and "Public international organisation". Under the NSLA Bill, foreign principals are deemed to include not only foreign governments but international organizations such as the UN and its bodies and representatives, and foreign political organizations (not defined).

The extent of relevant relationships that become unlawful or require self-registration under these bills as presently drafted is problematic.

We are extremely concerned that Chinese individuals and organizations, in comparison to others, are closest to bureaucratic risk of error under these proposed bills.

Conclusion

Chinese Australians are the most exposed to the bills and the least able to understand the legislation. We predict there will be wide spread confusion over which activities and relationships are regulated under this legislation.

If the bills are passed in anything like their present form, this will result in increased complexity of Chinese- Australian social and commercial projects, impacting upon community and commercial overseas and local relationships at many levels. The involvement of overseas private and public entities, and use or acquisition of sensitive foreign technology and contracts will all be affected. Such impacts will occur whether or not impinging on sensitive and vital infrastructure, and whether or not the venture involves key market and vital economic value.

The difficult, complex and contested passage of these bills involving poorly drafted obligations and consequences, signals potential concerns and confusion ahead for our

community. How does the man in the street weigh up multifaceted issues on whether a particular activity is unlawful foreign interference and adverse to national security ? These bills are worded so broadly that it will be impossible for people to understand if they are complying with them or not. This is not acceptable in current form given that the penalties for non-compliance are so severe, and that there are so many provisions involving absolute or strict liability.

Further consultation highly desirable

We support any further extension of the submission and inquiry timetable. The bills will have an enormous impact on our community as well as on other ethnic communities and their consideration should not be rushed. We note that a mere 3 ½ business days has been allowed for these current submissions in relation to the FITS amendments.

The Government needs to properly engage the Chinese Australian community in a full and open discussion of these bills and enlist appropriate help from the Chinese Australian communities. Our organization offers to be part of an ongoing Chinese Australian community review during and after the process of vetting the FTIS and NSLA Bills.

We thank you for the opportunity to make this submission.

Yours Faithfully

Kingsley Liu

Vice President
Chinese Community Council of Australia