



Australian Government
Attorney-General's Department

April 2023

Attorney-General's Department Submission

**Senate Finance and Public Administration References
Committee's inquiry into the administration of the
referendum into an Aboriginal and Torres Strait Islander
Voice**

Introduction

1. The Attorney-General's Department (the department) welcomes the opportunity to provide a submission to the Senate Finance and Public Administration References Committee's (the Committee) inquiry into the administration of the referendum into an Aboriginal and Torres Strait Islander Voice.
2. The department is working closely with the National Indigenous Australians Agency (NIAA), the Department of Finance, the Department of the Prime Minister and Cabinet and the Australian Electoral Commission to hold a referendum in the second half of 2023 on recognising Aboriginal and Torres Strait Islander peoples in the Constitution through a Voice. The Office of Constitutional Law, together with the NIAA, has supported the development of the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023, and is responsible for other constitutional policy issues associated with the referendum. The department is also supporting the integrity of the referendum as a member of the Electoral Integrity Assurance Taskforce (EIAT), and through the administration of the Foreign Influence Transparency Scheme (the Scheme).
3. The inquiry's Terms of Reference reflect the need to protect against non-transparent foreign influence in the administration of the upcoming referendum. Consistent with the Terms of Reference, this submission focuses on the department's role in contributing to the protection of the integrity of the referendum, and in particular, the potential application of the Scheme.
4. The EIAT is made up of relevant agencies across the federal government, working together to provide information and advice to the Electoral Commissioner on matters that may compromise the real or perceived integrity of federal electoral events, including referendums. The Deputy Secretary of the department's International and Integrity Group is a member of the EIAT Board, and departmental officers responsible for the administration of the Scheme are part of the operational officer-level Taskforce.
5. The department also administers the foreign interference offences in the *Criminal Code Act 1995* (Criminal Code). These offences are enforced by the Australian Federal Police (AFP), and target foreign actors who seek to interfere with Australia's democratic or government processes, including elections and referenda, through covert, deceptive or threatening actions.

The Foreign Influence Transparency Scheme

6. The *Foreign Influence Transparency Scheme Act 2018* (FITS Act) establishes the Scheme, which is a key transparency measure to provide visibility of the nature, level and extent of foreign influence in Australia's political and governmental processes. It does this by requiring any person or entity that undertakes certain activities (registrable activities) in Australia for the purpose of influencing a political or governmental process or decision on behalf of a foreign principal to disclose these details on a public register.
7. Registrable activities include general political lobbying, parliamentary lobbying, communications activity or disbursement activity. Foreign principals are foreign governments, foreign government related entities, foreign government related individuals and foreign political organisations. The register is available for public view at <https://transparency.ag.gov.au/>.

8. The Scheme is intended to ensure the nature and extent of influence by foreign governments and political organisations on Australian federal political or governmental processes is transparent and appropriately disclosed to the public and decision makers. When conducted in an open and transparent manner, foreign influence is a legitimate part of international relations and is distinct from foreign interference which is covert, coercive, deceptive or corrupting, and is contrary to Australia's national interest.

Application of the Scheme to the Voice referendum

9. The Scheme will apply to registrable activities undertaken in Australia on behalf of a foreign principal for the purpose of influencing electors in relation to their vote in the proposed Voice referendum. This includes 'communications activities', being the public communication or distribution of information, or the production of such information for the purpose of it being publicly communicated or distributed by a third party (such as by a media outlet or social media platform).
10. The Scheme will also apply to activities undertaken for the purpose of influencing other political or governmental processes relating to the Voice referendum, such as activities undertaken for the purpose of influencing:
 - a political party, independent member of parliament, or a registered political campaigner's policy position or campaign in relation to the Voice referendum, and
 - Government decisions and proceedings in a house of parliament concerning the Voice referendum.
11. The Scheme imposes additional obligations on registrants and the department during voting periods (including a referendum), including obligations on registrants to update their details on the register following the issuing of writs, and obligations for the department to publish updates to the register more swiftly during the voting period. These obligations assist to ensure that people consuming information are aware of the source of the information and can assess it for potential bias and political objectives. These requirements reflect the heightened political activity during voting periods and the importance of transparency over activities intended to influence political or government processes so voters can make informed decisions.

Protecting the integrity of the Voice referendum

12. The department will support the integrity of the Voice referendum through the administration of the Scheme, and its membership of the whole-of-government EIAT. The EIAT will support the integrity of the referendum via its role in addressing electoral integrity issues. Risks to electoral integrity can arise through multiple vectors, including cyber or physical security incidents, foreign interference, and disinformation or misinformation about electoral processes.
13. The department is closely involved in the EIAT's preparations for the proposed Voice referendum, including to ensure that the department is positioned to provide advice and information to the Electoral Commissioner and other EIAT members about the potential application of the Scheme during the referendum period, and to receive such information from other EIAT members. As it did during the 2022 federal election, the department will consider any allegations that arise to determine whether any registrable activities are being undertaken, and work with government counterparts to assess whether any obligations under the Scheme apply to the material to ensure the integrity of the referendum.
14. The EIAT also provides a forum to coordinate advice on other issues that may potentially affect the integrity of the proposed referendum, including foreign interference offences.

Foreign interference offences

15. The foreign interference offences in Division 92 of the Criminal Code are administered by the department and enforced by the AFP, and target covert, deceptive or threatening actions undertaken on behalf of or in collaboration with a foreign principal to interfere with Australia's democratic or government processes, or the exercise of Australian democratic or political rights, including the conduct of or voting in elections and referenda. The offences are tiered, and include preparatory offences, and are designed to enable intervention in a range of circumstances.
16. The foreign interference offences supplement other offences in the Criminal Code which are of general application but which could also apply in the context of voting in the Voice referendum, for example the offence of using force, violence, intimidation, or the making of threats of any kind, to interfere with the exercise of an Australian political or democratic right or duty (section 83.4 of the Criminal Code).

Parliamentary Joint Committee on Intelligence and Security Review into the Scheme

17. The Parliamentary Joint Committee on Intelligence and Security (PJCIS) is currently undertaking a statutory review of the FITS Act, in accordance with section 70 of the FITS Act. The PJCIS commenced its review on 6 August 2021, and resumed the review on 7 September 2022 following the federal election. The review is an opportunity to explore options to improve the operation of the Scheme.
18. The department has made two substantive submissions to the PJCIS, which are available on the PJCIS' website, and has appeared before the PJCIS to give evidence.