



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the Review of the Foreign Influence Transparency Scheme Act 2018

Parliamentary Joint Committee on Intelligence and Security

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Introduction

1. The Department of Home Affairs (the Department) welcomes the opportunity to provide the Parliamentary Joint Committee on Intelligence and Security (PJCIS) with this submission as part of its Review of the Foreign Influence Transparency Scheme Act 2018 (the FITS Act).
2. Foreign interference is defined as activities that are deceptive, corrupting, clandestine and coercive in nature. Left unchecked, foreign interference can be extremely corrosive to Australia's security, sovereignty, prosperity and our social cohesion.
3. Foreign influence is defined as open and transparent activities to advocate for particular outcomes or shape the consideration of issues important to foreign actors. When conducted in an open and transparent manner, these activities can contribute positively to public debate.
4. The line between influence – which if conducted transparently and openly is a hallmark of a vibrant democracy – and interference is not always starkly drawn. An assessment of context, purpose, threat and risk is central to determining whether an activity or interaction is one about which participants should be concerned.
5. The Government has developed a range of legislative, policy and operational responses to counter the threat of foreign interference. The foreign interference threat has the potential to evolve in response to the success of our counter foreign interference measures.¹ It is therefore necessary to regularly review the effectiveness of our legislation, policy and operational settings to meet these evolving challenges. The Department, through the Counter Foreign Interference Coordination Centre (CFICC), has a lead role in developing and implementing Australia's response to attempts to interfere in our democratic and civil institutions, and in our society.
6. Similarly, the Government has enacted legislative, policy and operational responses to enhance transparency in relation to foreign influence. The FITS Act aims to provide the public and decision makers with visibility and transparency of foreign influence activities directed at our democratic processes.
7. While the objectives and intent of the FITS Act and Australia's approach to countering foreign interference are distinct, they are complementary and each have at their heart the core values of maintaining a culture of openness and transparency, and safeguarding Australia's security and sovereignty. Working together, they serve to protect Australia's national interests by providing necessary transparency on our dealings and relationships with foreign entities.

¹ Measures of success are tabled in the Department of Home Affairs 2020-21 Annual Report with all Countering Foreign Interference Performance Measures met, <https://www.homeaffairs.gov.au/reports-and-pubs/Annualreports/home-affairs-annual-report-2020-21.pdf> , pp 47 -49

Definitions:

Foreign influence:

Open and transparent activities to advocate for particular outcomes or shape the consideration of issues important to foreign actors. When conducted in an open and transparent manner, these activities can contribute positively to public debate.

Foreign interference:

Activity carried out by, or on behalf, of a foreign actor, which is

- coercive, deceptive, clandestine or corrupting, and is
- contrary to Australia's sovereignty, values and national interests.

Foreign actor:

For the purpose of this submission the Department defines foreign actors as foreign governments, foreign government-controlled entities, foreign intelligence services seeking to conduct either acts of foreign influence or foreign interference in Australia, including through representatives or proxies.

Role of the Department of Home Affairs in countering foreign interference

8. The National Counter Foreign Interference Coordinator (NCFIC), who is a senior officer in the Department, is responsible for central coordination, strategy and policy leadership in relation to countering foreign interference.²
9. The CFICC in the Department coordinates and supports other Australian Government agencies in the range of measures they administer to mitigate the threats from those who intend to undertake foreign interference activities against Australia.
10. Through the work of the CFICC, the Department works to develop and harness whole-of-government policy responses and capabilities to identify and counter hostile foreign actors who seek to undermine Australia's sovereignty and national interests through acts of foreign interference. The Department coordinates and supports other Australian Government agencies in the range of measures they administer and are responsible for to mitigate the threats from those who intend to harm Australia.

² Home Affairs Portfolio Overview 2020-21, p.3 <https://www.homeaffairs.gov.au/reports-and-pubs/budgets/2020-21-home-affairs-pbs-overview.pdf>

11. The Department considers the FITS Act to be a vital supporting element of the overall national approach to countering foreign interference.

Threat environment

12. Australia's threat environment has evolved significantly since the commencement of the FITS Act in December 2018. In March 2021, the Australian Security Intelligence Organisation (ASIO) stated in its annual threat assessment that it had seen espionage and foreign interference attempts against all levels of Australian politics, and in every single state and territory.³
13. In May 2021, the Director-General of Security stated that "Attempts at espionage and foreign interference remain unacceptably high", and that "Australia's adversaries are trying to steal our secrets, undermine our sovereignty and interfere in our democratic institutions. We continue to see multiple espionage and foreign interference attempts from multiple countries."⁴
14. In the 2020-21 Annual Report, the Director-General observed "based on current trends, we anticipate that espionage and foreign interference will supplant terrorism as Australia's principal security concern over the next five years. This is not to downplay the threat of terrorism, which represents an ongoing and evolving challenge".⁵
15. Foreign interference occurs through a range of vectors. People can be corrupted, deceived or coerced into acting for, or on behalf of, a foreign actor. Infrastructure can be degraded, controlled or accessed to achieve a purpose for a foreign actor. Information can be stolen, manipulated or fabricated to achieve a purpose which is in the strategic interest of a foreign actor.
16. The challenges facing Australia from foreign interference are not limited to those sectors of Australian society traditionally associated with national security. The scale of hostile activity has increased across many sectors of society, including our universities, industry, and our democratic institutions. The Department is aware of instances of members of our culturally and linguistically diverse community being subjected to coercive behaviours by foreign governments in attempts to limit their freedom of expression and association.⁶
17. Those who engage in foreign interference against Australia are seeking to **improperly** influence our decision makers to advance their own interests, undermine the values that underpin Australia's free and open society, and threaten members of the Australian community. They do this by:
 - cultivating and manipulating people through personal, political, business and diplomatic relationships to gain an improper advantage;
 - covertly or deceptively interfering in decision-making at all levels of government (federal, state and territory and, local);
 - seeking to interfere in or disrupt our democratic electoral processes;

³ Mr Mike Burgess, ASIO Director- General's Annual Threat Assessment, 17 March 2021, <https://www.asio.gov.au/publications/speeches-and-statements/director-generals-annual-threat-assessment-2021.html>

⁴ Mr Mike Burgess, ASIO Director-General, Senate and Legal Constitutional Estimates, 25 May 2021, <https://www.asio.gov.au/publications/speeches-and-statements/senate-legal-and-constitutional-affairs-estimates.html>

⁵ *ASIO Annual Report 2020-21*, ASIO Annual Report 2020-21 | Australian Security Intelligence Organisation

⁶ Human Rights Watch Report 'They Don't Understand the Fear We Have', 30 June 2021 <https://www.hrw.org/report/2021/06/30/they-dont-understand-fear-we-have/how-chinas-long-reach-repression-undermines>; Senate Standing Committee on Foreign Affairs, Defence and Trade on the Inquiry into the issues facing diaspora communities in Australia, 13 September 2021, Inquiry into certain aspects of the Department of Foreign Affairs and Trade Annual Report 2019-20 – Parliament of Australia (aph.gov.au)

- attempting to shape public discourse and undermine free and open public debate on matters of national significance in Australia through interference in and control over academic institutions and the media (including social media channels and the foreign language media); and,
 - singling out sections of the community through pressure and manipulation to sow discord, silence dissent and damage the cohesion of our society.
18. The contours of the contemporary threat environment are becoming increasingly blurred. The consequences of non-transparent foreign influence and acts of foreign interference have now extended beyond traditional national security concerns. Damage to Australia's international reputation and relationships, degrading Australia's diplomatic and trade relations and inflicting substantial economic damage and compromising nationally vital assets and critical infrastructure are all very real consequences of the current threat environment.

The Foreign Influence Transparency Scheme

19. The Australian Government rejects coercive, deceptive, clandestine or corrupting behaviour and has established a counter foreign interference approach that builds upon the pillars of transparency, enforcement, deterrence and capability. The Department's policy approach to countering foreign interference is to raise the cost and reduce the benefit to foreign actors who seek to interfere in our society. The Department's goal is to work across Government and the Australian community to safeguard our way of life against foreign interference impacting Australia..
20. The FITS Act, which is administered by the Attorney-General's Department (AGD), provides part of a network of early warning measures and defences that aim to identify and address foreign interference. The scheme compels disclosure of foreign influence. Exertion of influence by a foreign government in Australia is permissible to the extent that it is transparent. The FITS Act seeks to bring about that transparency. If someone deliberately breaches the FITS Act, then that may be an indicator that foreign interference is occurring.
21. The context and purpose of any attempt by foreign entities or bodies in engaging in Australian public debates is central to an assessment of harm that might occur, managing real or perceived conflicts of interest, or indeed in raising more serious concerns about foreign interference. A process that relies solely on the foreign nature of the relevant entity without a consideration of risk and potential harm risks distracting effort from potentially harmful actions by those foreign entities – tending towards interference. While a universal declaration of potential conflicts aids transparency and supports open and transparent democratic debate, the benefits of that approach have been called into question where interests may in fact be aligned, or where relationships and connections are already publicly known and well understood.
22. The Department and AGD are together considering the following options to support administration of the FITS Act by AGD:
- strengthening the process for the provision of strategic advice to AGD so that it can best focus its effort on early identification of potentially problematic foreign influence which may be a precursor to foreign interference
 - ensuring that AGD has access to intelligence to support compliance action. AGD is closely linked to National Intelligence Community and other Commonwealth partners working on foreign interference matters, including through its membership of the Counter Foreign Interference Taskforce's Senior Oversight Board, which is chaired by the NCFIC. Nonetheless, it may be possible to further strengthen coordination and information sharing mechanisms.

- the FITS Compliance Strategy has a clear focus on raising awareness through communication and education programs and outreach.⁷ The Department's responsibilities include social cohesion and coordination of the Australian Government's response to foreign interference. The Department has in place a national network of engagement and community liaison officers to support that work. There are opportunities for the Department to support FITS-focused communication and outreach efforts by AGD.
23. Enhanced strategic support would assist AGD to focus its efforts on early identification of potentially problematic foreign influence before such activity moves into the so-called 'grey zone' where legitimate foreign influence might begin to shift into the more malign activity that could cross the spectrum into foreign interference.
 24. Strengthening the approach, through coordinated efforts, in AGD's administration of the FITS Act will limit and impact opportunities for foreign actors to pursue opportunities to interfere with Australian decision makers at all levels of government and across a range of sectors including democratic institutions, education and research, media and communications, culturally and linguistically diverse communities and critical infrastructure.

Conclusion

25. Foreign interference is a threat to Australia's sovereignty, values and national interests. Foreign actors can undermine Australia's sovereignty and advance their interests at our expense by interfering in Australia's decision-making and seeking to unduly influence public perceptions of issues. The FITS Act supports transparency around influence sought by foreign states and actors in Australia.
26. The challenges associated with countering foreign interference are likely to grow and evolve over the coming decade, and continue to require a whole-of-nation response. Although improved capabilities to detect, deter and disrupt foreign interference are likely to be an important part of future policy and operational responses, it will be equally important to raise awareness of the threat and increase resilience across parts of society most at risk.

⁷ Attorney General's Department, FITS Compliance Strategy, 1 July 2021 FITS Compliance Strategy | Attorney-General's Department , <https://www.ag.gov.au/integrity/publications/fits-compliance-strategy>