



22 January 2018

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

By email only-
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Dear Secretary

The Foreign Influence Transparency Scheme Bill 2017 (the Bill)

The Financial Services Council (**FSC**) has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry is responsible for investing more than \$2.7 trillion on behalf of 13 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

Thank you for the opportunity to provide a submission on this topic.

General Observations

1. The FSC supports the policy objectives of the Bill of transparency in public administration and the identification of the forms and source of foreign influence in Australia and particularly where such influence is exerted by way of intermediaries;
2. However, the Bill and associated legislation introducing the Foreign Influence Transparency Scheme (**Scheme**) is drafted quite broadly and on its face, the Bill would mean that industry bodies, such as ours own, which count *foreign principals* (as defined) amongst our membership base may be liable to register under the Bill. This is because as an industry advocacy body, we could be treated deemed to be as undertaking action "on behalf" of a foreign principal, for example, when representations are made to the Government on specific public policy matters;
3. Industry bodies, such as the FSC, do not act on behalf of any individual member, but rather on behalf of the entire membership.

Representations which are made are made in what we believe are the interests of the relevant sector and industry. Commonly, a submission will be made only after an appropriate governance process has been followed. Depending on the nature of the matter this will include a working group analysis and often approval at a Board or Board Committee level. In any event, there always is reporting of submissions to the appropriate Board Committee and ultimately to the Board;

4. Further, we note that given our role as an industry advocacy body, more often than not, we will be approached by regulatory bodies (such as ASIC, APRA and AUSTRAC) where significant regulatory changes are proposed to various sectors of the industry. This is to ensure that proposed regulatory policy is workable from an industry perspective and does not have unintended consequences. Thus, in these interactions with regulatory bodies, we act, within the ambit of our membership, on a "whole of industry" basis;
5. As we understand it from the Explanatory Memorandum, a significant policy objective of the Scheme is to ensure that decision-makers in the public are aware of the identity of interests advanced in respect of a particular decision or process, especially where concealed intermediaries may be involved. However, in the case of industry advocacy bodies generally and specifically in the case of the FSC, there is no concealment of our membership. In the case of the FSC, our membership base is publicly disclosed on our website. Further, in our submissions to Government and relevant regulators, we advise which sector of the industry will be impacted by a particular item of legislation or proposed regulatory approach;
6. Generally, except in the case of sensitive commercial information, our submissions are available on our website and on the websites of regulators and Government to whom submissions are made. In short, the operations of industry advocacy bodies are not opaque, but are open and transparent;
7. A requirement for industry advocacy bodies such as the FSC to register, in our view, would not achieve the objectives of the Scheme nor would it be consistent with its policy. Further, it seems to us that a requirement to register and otherwise comply with the Scheme would impose a disproportionate and unjustifiable regulatory requirement and in the result would be unlikely to add to the transparency objective of the Scheme;
8. There are other aspects of the proposed Scheme which cause concern. For example, the penalties for breach in our respectful opinion are draconian and disproportionate, particularly if the Scheme is implemented in its proposed form. The imposition of criminal penalties upon an advocacy body such as ours which inadvertently fails to comply with a highly technical piece of legislation is inappropriate;
9. In addition the record keeping and retention requirements if they were to apply to industry bodies such as ours and in the circumstances in which we operate, are costly, overly bureaucratic and breach of which gives rise to quite severe strict liability penalties. The number of submissions the FSC prepares in any given year is significant. In addition, there are many more touch points with members and regulators which, strictly speaking, if we were subject to the Scheme would require detailed record keeping and record retention.

Australian Financial Markets Association (AFMA) Submission

10. We have had the benefit of reading the AFMA submission dated 17 January 2018. The FSC's position is not as such all that different from that of AFMA. We are a company limited by guarantee, with return of any profits or other distribution to members prohibited under our Constitution. We are a policy focused industry advocacy body that represents various sectors within the broader financial services sector. Like AFMA, we engage with Government and regulators in relation to matters of public policy that impact the effectiveness of sectors falling within our remit;
11. We broadly adopt and endorse the reasoning in the AFMA submission and commend it to the Committee. In particular, we agree with the suggestion that the Committee should consider and revise relevant exemptions available to industry advocacy bodies such as AFMA and the FSC.

Should you have any questions, please contact the writer

Yours Faithfully

Paul Callaghan

General Counsel