



Email

2 February 2018

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

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Dear Secretary

I refer to the public hearing held by the Parliamentary Joint Committee on Intelligence and Security (**the Committee**) on Tuesday 30 January 2018 with respect to the review of the Foreign Influence Transparency Scheme Bill 2017 (**the Bill**). The Chair of the Committee directed that answers to questions taken on notice be provided to the Committee by Friday 2 February 2018.

Questions taken on notice by Law Firms Australia (**LFA**) and the answers to those questions are set out in the annexures to this letter. The questions have been copied from the unrevised version of the Hansard transcript.

Please do not hesitate to contact me if LFA can be of further assistance to the Committee.

Yours faithfully

Mitch Hillier
Executive Director
Law Firms Australia



Question 1

Mr LEESER: I want to test that particular proposition. In relation to your practices, do any of you have lobbyists or people who provide advice about government in a non-legal capacity employed in your firms as partners or special counsel or as employees of the firm?

Mr Hillier: As I understand the question, it is whether or not we have any persons employed in our member firms who are engaged in lobbying activities?

Mr LEESER: Correct.

...

Mr LEESER: What if they were nonlawyers but working in the firm? There is no-one in your firms who does that?

Mr Hillier: I can take the specific question on notice, but, to the best of my knowledge, the answer is no.

Answer 1

'Lobbyist' is defined at cl 3.5 of the Australian Government Lobbying Code of Conduct. Within this definition, I am advised that no partner or employee of a LFA member firm is a lobbyist.

However, the Bill contains a much broader definition of 'lobby.' Clause 10 states that 'lobby' includes:

- (a) communicate, in any way, with a person or a group of persons for the purpose of influencing any process, decision or outcome; and
- (b) represent the interests of a person, in any process.

Partners and employees (legal and non-legal) of law firms regularly represent the interests of clients, including to Ministers and departments of the Australian Government. In doing so, they communicate for a purpose of influencing a process, decision or outcome. Examples of such activities are outlined in the LFA submission to the Committee dated 22 January 2018. However, it is noted that these activities are generally, or are generally incidental to, ordinary legal services.



Question 2

Mr LEESER: Of the firms that you represent, how many are incorporated and how many are partnerships?

Mr Hillier: There's diversity. I can take that question on notice and come back to you with the specifics.

...

Mr Hillier: Mr Leeser, in response to your previous question, I realise that you asked if any of the law firms who are members of Law Firms Australia are incorporated, and to the best of my knowledge they're not. I omitted to say there are a variety of partnership structures amongst the members.

Answer 2

I am advised that no member firms of LFA are incorporated legal practices. All member firms are a form of partnership.



Question 3

Senator FAWCETT: You mention in your submission the impact on legal professional privilege and you mention that again there. You may recall from the debate around FIRB and disclosures the issue of whether effective control of a company is foreign as opposed to an Australian subsidiary. What would your view be on a requirement that, in order to provide a professional service, part of your due diligence would need to include assuring yourselves of the true control so that that statement up-front was in fact an accurate reflection to the decision-maker about where the true control of your client lay?

Mr Hillier: I think the important part to that proposition would be the ability of law firms or any professional service provider to make those inquiries and, as long as they make reasonable inquiries, I think it would be an important protection, but I would have to take that back on notice to the members, given that we haven't discussed it previously.

Answer 3

I am advised that LFA member firms undertake a range of risk assessment measures before taking on a new client. As part of these measures, some LFA member firms do seek to take reasonable steps to identify the ultimate ownership of a new client. However, LFA does not believe it would be appropriate in the context of the Bill to require all lawyers to identify, or attempt to identify, the ultimate ownership or control of every client. To do so would impose a major cost and administrative burden, and it is unlikely that many lawyers in the broader profession have the systems or resources available to meet such a requirement.

Our view is that the objectives of the Bill would be more simply met by adopting the measures proposed in our written submission and discussed before the Committee, but LFA is available to further discuss any alternative approach.