

SUPPLEMENTARY SUBMISSION – MR TONY KEVIN, DATED 19 FEBRUARY
2018

I thank the PJCIS Chair and Committee for inviting me to lodge a supplementary submission to the submission I lodged on 3 January on the draft Foreign Interference Transparency bills. My first submission was published by the PJCIS on 10 January as submission number 1. The Chair has allowed me until 23 February to lodge this supplementary submission.

The purpose of my supplementary submission is to highlight in detail, as an example of this draft legislation's dangers as I see them, how my declared public activity during my just-ended privately organised and funded visit to Russia [REDACTED] and my forthcoming planned public and media activity in Australia which will draw on my opinions I have formed or confirmed in my own mind during this visit to Russia, would put me squarely in the line of fire as a person whose activities would probably be 'captured' by the present draft legislation, unless I had taken the precaution of first registering as a foreign agent of Russia.

This, as a retired former Australian ambassador and loyal Australian citizen in good standing, I decline on principle to do.

It would then be for two Ministers to decide whether criminally to prosecute a 74-year old retired citizen and former Australian ambassador for exercising his democratic right to travel to a foreign country with which Australia has normal diplomatic relations, and to engage in public dialogue about that country during and after those visits.

In my case, I would hope that Ministers would exercise discretion not to prosecute me, but in my opinion this is no proper basis for passing new laws. And the existence of such a

law with its wide discretionary Ministerial powers would inhibit some Australians from engaging with me or from hearing my views, of which I have already seen some signs. This should not happen in our democracy, which should be based on clear and consistent laws.

I contend that I am not anyone particularly unusual. There are many Australian citizens who are engaging in public activities entirely comparable to mine, in relation to Australia's relations with China, the United States, or Israel, to name but three countries of particular foreign policy interest to many Australians. I simply know my own circumstances and interests best, which is why I detail them in this supplementary submission, as an example of the dangers to free expression and free association which this draft legislation in my view entails. I am simply an example of these dangers.

There is a lively dialogue underway now in Australian media and on-line journals, on Australia's new foreign policy choices as the world shifts away from a US global leadership-based world order towards a more balanced world order, with larger great-power roles being played by, in particular, the nuclear weapon states China and Russia. To my mind and that of others, e.g. Hugh White and Graeme Dobell of the Australian Strategic Policy Institute, this change requires consideration of new Australian approaches to the maintenance of international and regional security. I cite John Menadue's Blog 'Pearls and Irritations', Crikey, New Matilda, Inside Story, The Conversation, Eureka Street, AIIA Australian Outlook, as examples of journals carrying contributions to such intellectual debates. Retired Australian senior diplomats, such as Richard Woolcott, John Menadue, Richard Butler, Mack Williams, John McCarthy, Geoff Miller, Richard Broinowski, myself and several others, have been and are active participants in this public dialogue: as are people like former senior public servants (e.g., Paul Barratt), former armed forces officers, lawyers (e.g., James O'Neill), doctors (e.g., Sue Wareham), and academics (e.g., Joe Camilleri).

This public dialogue on Australian foreign policy options in a changing world order is not confined to professional journalists and serving diplomats, nor should it be. I believe that uninhibited intellectual dialogue among Australians on foreign policy choices will contribute to a better and safer Australian foreign policy in a changing world, to the extent that Australian governments of the day choose to take heed of it.

In any case, Australian voters are free to draw their own conclusions about the foreign policies offered to them by the government and opposition parties of the day, or by other persons expressing views outside the current political mainstream. Australian voters are in general not gullible fools who need to be protected from dangerous foreign ideas. I submit that a free public dialogue on Australia's foreign policy choices, involving anyone who wishes to take part in it and can attract an audience, is an essential part of our democracy.

My work on Russia should be part of this desirable dialogue, not excluded from it.

As stated in my first submission, I object to this draft legislation on four grounds:

1. That it conflates the traditionally well-defined crime of espionage, with a new presumed crime of 'harmful foreign interference' in Australian government policymaking;
2. The constraints this legislation will put on Australian citizens' present freedoms of expression and free association with foreign persons or organisations;
3. The iniquity of obliging Australian citizens who wish to express views in public on international political issues, and to have contacts with foreign persons or organisations who might share such views, to register as 'foreign agents', as a precaution against them possibly being charged as criminals under this legislation;
4. The arbitrary and open-ended nature of the legislation, which as it stands leaves large discretion to two Ministers of the Crown in deciding which Australian persons to prosecute as criminal offenders under this draft legislation if it becomes law.

While I was in Russia very recently, as an independent traveller, I engaged in the following public activities, during which I offered frank personal criticisms of current US-NATO and Australian policies towards Russia. I expressed support for policies of relaxation of current dangerously increasing Russia-West tensions and military escalation. I appealed for mutually respectful high-level inter-governmental dialogue, support for which is currently in my view dangerously absent in the West:

1. A public lecture on 24 January at the Moscow Museum of Contemporary Russian History, on 'Prospects for East-West detente', facilitated by the Russian International Affairs Council, the closest Russian counterpart to the Australian Institute of International Affairs. I also later met the Chairman of the RIAC,

Professor Andrey Kortunov.

2. An interview on that same date, subsequently published in 'International Affairs', a Moscow journal connected with the Russian Foreign Ministry and the RIAC;
3. A televised conversation on 26 January with Oksana Boyko of the rt.com current affairs program 'Worlds Apart'. This 20-minute conversation, conducted in English, was broadcast on 5 February to rt.com audiences around the world and it remains accessible on-line.
4. A meeting on 3 February in Crimea with the Chief Minister of Crimea, Sergey Aksyonov, which was reported by Crimean and mainland Russian media. In this meeting and in my comments to Crimean media immediately thereafter, I publicly advocated lifting the current NATO-EU sanctions against Crimea and mainland Russia. I said that my impression from my brief visit was that Crimea's incorporation into Russia was popular with people in Crimea, and that I expected it to be permanent.

The question here is not whether the views I expressed in Russia and Crimea are correct or not. I recognise that some Australians at this time, in good faith, do not agree with my views. The question is whether in expressing such views publicly and to media in Russia, I was acting as a 'foreign agent of influence' of Russia? I contend that I was not.

Similar questions arise in respect of my forthcoming planned public activity in Australia on matters to do with Russia, as follows:

1. An opinion piece that I have submitted to a leading Australian newspaper, on prospects in the forthcoming Russian presidential election and in Russia-West relations
2. A scheduled talk at the AIIA Canberra Branch on 8 March, on the same subject
3. Forthcoming speech engagements at a Melbourne RSL Club, and at the Melbourne Jewish Writers Festival
4. Pre-recorded interview material on 20 February with the ABC 'World Today' current affairs program.

I intend to continue to respond as opportunity arises to any such invitations to speak, and to express and explain my opinions on matters to do with Russia and Australian-Russian relations. I do not believe this makes me an 'agent of Russian influence', and therefore I will not register as such under this draft legislation if it becomes law.

Other submissions to PJCIS – I have read most of them – concentrate on the impact of the proposed legislation on the work of particular professions or agencies, e.g. on the legal profession, on journalism, on lobbying, on accountancy, on the Churches, on aid organisations, on the Human Rights Council. All in one way or another seek exemptions from the draft legislation’s dangerously open-ended definitions of ‘foreign principals’ and of the activities and contacts it proposes to regulate.

My criticism is more across the board. I belong to no profession or organisation. I am simply a citizen and retired diploma. I claim the right to express my views, in good faith, on international issues of concern to me as an Australian citizen and as a parent and grandparent. I do not want to see the human species destroyed in global nuclear war, an increasingly likely prospect at this time of increasing East-West tensions and a failure by the West to appreciate the growing risks of war by accident or rash provocation.

I therefore think it vital for me to use whatever public standing and credibility that I still have, to argue for better relations with Russia and China based on a mutually respectful dialogue, respecting the national interest of all countries involved, and to try to persuade my fellow citizens of the prudence and correctness of my views.

When I engage in the sorts of public activities and contact with Russian persons in which I have recently engaged while in Russia, this does not mean I have been acting ‘on behalf of foreign principals’.

Section 11 (1) is far too open-ended. As many other submissions have commented in relation to their professional interests, it leaves far too much to the discretion of Ministers. Taken literally, it would inhibit me from any policy conversation with any Russian person, no matter how trivial or insignificant the conversation or the person, if that conversation or person could be linked to anything I subsequently said publicly in Australia.

The onus would then be on me to demonstrate to two Ministers’ satisfaction that I had

come to whatever views I might express on Russia-West relations or Russia-Australia relations, independently of any previous conversations in Russia or with Russians. This would put the burden of proof on me, of needing to establish my 'innocence' in a situation of 'apparent guilt'.

I submit that simply to state my propositions in these terms shows how illogical and unacceptable these parts of the draft legislation will be, in terms of Australian political values.

Australia has diplomatic relations with, for example, Russia, China, US and Israel. While the Australian government of the day may in its confidential national security policies 'grade' such countries and other countries on a 'friendly allies'- 'potential enemies' scale, Australia is thankfully not at war with any of them. It is thus any Australian citizen's right to come to their own views on particular countries and on the relations Australia could or should have with them, and to express such views freely in Australia without constraint, as long as they are not defamatory or advocating breaking existing Australian laws.

This is the thrust of my two submissions. I request that this supplementary submission be published by the Committee, and I stand ready to speak with the Committee, by telephone or in person, if the Committee wishes to question me further on any of these matters.

Tony Kevin, Canberra, 19 February 2018

Sent from my iPad