



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

By email: pjcis@aph.gov.au

Dear Committee Secretary

Inquiry into the provisions of the Foreign Interference Transparency Scheme Bill 2017 – Supplementary Submission

Australian Lawyers for Human Rights (**ALHR**) has previously made a submission in relation to the proposed *Foreign Interference Transparency Scheme Bill* (**'the Bill'**) and would appreciate the opportunity to provide this supplementary submission in relation to the Committee's current Inquiry following on from the changes to the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* included in Submission 40.1 from the Attorney General's Department.

Consistency in concept of 'foreign principal'

1. ALHR notes that 'foreign principal' is defined in the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* more narrowly than in the *Foreign Interference Transparency Scheme Bill*. The new Section 90.2 inserted by the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* defines 'foreign principal' in general terms as including a:
 - foreign government
 - foreign government authority
 - foreign political party
 - terrorist organisation
 - public international organisation, or
 - subsidiary entity or organisation of the above.
2. Foreign businesses and individuals (unless acting on behalf of one of those entities) are not covered by the 'foreign interference' sections 92.2, 92.3 and 92.4 of the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017*, unlike the situation under the *Foreign Interference Transparency Scheme Bill* which regulates communications

between Australians with foreign individuals and foreign businesses, as well as with foreign government authorities.

3. Following on from our earlier suggestion (and from our endorsement of the general position of the Human Rights Law Centre in relation to the 'foreign interference' legislation generally) that the Bill should take a harm-based approach, we submit that the nature of the **types of harm** that might be caused by "foreign interference" **need to be fully analysed** so that the Bill can focus only on real harms and not impose severe penalties which are disproportionate and inappropriate.
4. As part of this process, **ALHR recommends that the concept of a 'foreign principal' in the *Foreign Interference Transparency Scheme Bill* should be narrowed to be no wider than the definition in the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017*. This would not only provide consistency between legislation but would more appropriately target the type of foreign interference that should be covered by the *Foreign Interference Transparency Scheme Bill*. This change would not completely solve all the problems with the *Foreign Interference Transparency Scheme Bill* which still has an unreasonably wide meaning given to the concept of acting 'on behalf of' a foreign principal, amongst other issues, but would considerably lessen the overreach of the present drafting of the *Foreign Interference Transparency Scheme Bill*.**
5. The *Foreign Interference Transparency Scheme Bill* should not be covering communications between Australians and their families and friends abroad and nor should individuals have to seek formal legal exemptions in order to discuss politics with their family overseas, as would seem to be the case under the present drafting of the *Bill*¹.
6. Another possibility is that the *Foreign Interference Transparency Scheme Bill* should be narrowed to cover as foreign principals only foreign individuals who are 'politically exposed persons' for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (see Appendix). The Bill should only be covering communications by Australians with persons who are most likely to be involved in negative and harmful foreign interference, and the concept of a 'politically exposed person' is perhaps a good starting-point.

ALHR is happy to provide any further information or clarification in relation to the above if the Committee so requires.

If you would like to discuss any aspect of this submission, please email me 

Yours faithfully

Kerry Weste

Acting President

Australian Lawyers for Human Rights

¹ Melissa Clarke, "Ordinary citizen or foreign agent? Mundane activities fall under Coalition's anti-interference laws", ABC News online, 15 March 2018 at <http://mobile.abc.net.au/news/2018-03-15/mundane-activities-fall-under-coalition-anti-interference-laws/9549052?pfmredir=sm>, quoting Attorney-General Christian Porter to the effect that "there are areas where individual exemptions may be appropriate."

ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

APPENDIX

The following description is based on the requirements in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML Act)*

‘politically exposed person’ or ‘PEP’ means an individual:

- (1) who holds a prominent public position or function in a government body or an international organisation, including:
 - (a) Head of State or head of a country or government; or
 - (b) government minister or equivalent senior politician; or
 - (c) senior government official; or
 - (d) Judge of the High Court of Australia, the Federal Court of Australia or a Supreme Court of a State or Territory, or a Judge of a court of equivalent seniority in a foreign country or international organisation; or
 - (e) governor of a central bank or any other position that has comparable influence to the Governor of the Reserve Bank of Australia; or
 - (f) senior foreign representative, ambassador, or high commissioner; or
 - (g) high-ranking member of the armed forces; or
 - (h) board chair, chief executive, or chief financial officer of, or any other position that has comparable influence in, any State enterprise or international organisation; and
- (2) who is an immediate family member of a person referred to in paragraph (1), including:
 - (a) a spouse; or
 - (b) a de facto partner²; or
 - (c) a child and a child's spouse or de facto partner; or
 - (d) a parent; and
- (3) who is a close associate of a person referred to in paragraph (1), which means any individual who is known (having regard to information that is public or readily available) to have:
 - (a) joint beneficial ownership of a legal entity or legal arrangement with a person referred to in paragraph (1); or
 - (b) sole beneficial ownership of a legal entity or legal arrangement that is known to exist for the benefit of a person described in paragraph (1).

² NOTE: The term ‘de facto partner’ is defined in the *Acts Interpretation Act 1901* and the terms ‘foreign country’ and ‘government body’ are defined in the *AML Act*.