

PJCIS Inquiry into the Foreign Influence Transparency Scheme Bill 2017

Attorney-General's Department Response to Questions on Notice

Public Hearing – 18 June 2018

Additions to Explanatory Material

Question (page 19, Proof Transcript)

Mr DREYFUS: If we were able go through at some point this 28-page submission received today, we'll see within it—I'm not going to try and read it during the course of this hearing—some suggestions that the department has made for amendments to the explanatory memorandum?

Ms Harmer: That is correct. In that submission, we have comprehensively reviewed each of the submissions that were provided to the committee. We were greatly assisted by the secretariat providing those submissions as they came in. Unfortunately, a number did come in after close of business on Friday and so we've prepared it over the course of the weekend and I believe provided it the committee shortly after 10 am this morning. So we appreciate that hasn't provided much opportunity to review it during the course of today, but I think the vast majority of the questions we've been asked this evening are addressed in some respect in that supplementary submission. There are a small number of instances in which we have perhaps not suggested but acknowledged that, in circumstances where some submitters have suggested clarity may be required, that could be achieved through the explanatory memorandum. As I say, I think there are perhaps two or three instances, and a quick text search of the memorandum would throw that up. We could draw it to the attention of the secretariat, if that's helpful.

Mr DREYFUS: The committee, given the shortness of time, would be assisted by anything the department is able to provide in terms of a list of possible amendments to the explanatory memorandum.

Answer

The issues that could be addressed in the explanatory materials, as identified in the department Submission 5.5 to the Committee, are:

- why absolute liability is appropriate for the elements of the offences in section 57 that the person undertakes an activity on behalf of the foreign principal after the end of the period (see page 5 of Submission 5.5 responding to Submission 4.2 of the Law Council of Australia)
- the meaning of religious activity – that is, an activity undertaken in accordance with the doctrines, tenets, beliefs or teachings of a person's religion or primarily for the purposes of religion (see page 10 of Submission 5.5 responding to Submission 12.2 of the Australian Catholic Bishops Conference)
- that a 'commercial or business pursuit' does not involve lobbying in relation to broader legislation or public policy of interest to a foreign government related entity under proposed subsection 29A(2) (see page 10 of Submission 5.5 responding to Submission 13.1 of the Australian Professional Government Relations Association), and
- that a foreign political organisation does not extend to international advocacy organisations where they are not operating politically (see pages 19, 21, 22, 23 and 27 of Submission 5.5

responding to Submission 40.1 of the Australian Conservation Foundation, Submission 57.1 of Oxfam, Submission 63.1 of GetUp, Submission 72.1 of Greenpeace Australia Pacific and Submission 90 of Change.org).

Drafting of subsection 11(3)

Question (pages 21-22, Proof Transcript)

Senator McALLISTER: What's the significance of the first three words in 11(3)? I realise it's a quite detailed question, but I think those three words, 'without limiting subsection 1', in part give rise to some confusion. As you describe it, actually the exact purpose of 11(3) is to limit subsection 1 by describing a state of knowledge that needs to exist alongside the other circumstances. But as drafted it says, 'without limiting' it. I don't understand why you've approached it that way.

Ms Inverarity: I don't know that I could speak to exactly why it's drafted to include 'without limiting subsection 1', but we certainly see it as an additional criterion that must be met in order for the activity to be undertaken 'on behalf of'. We can take that one away and think about it. We can speak to the Office of Parliamentary Counsel about it if that would be useful.

Senator McALLISTER: That would be good. Much of the bill draws a lot of comment, but we have had more comment about section 11 than anything else. I am a bit confused by how section 11, particularly subsections 1 and 3, will work. I think some reflection on whether it couldn't be drafted with a little more clarity would be useful.

Ms Inverarity: We are very happy to take that away.

Mr DREYFUS: Just to pick up on Senator McAllister's point, Oxfam Australia suggested that not only should acting 'on behalf of' be narrowed by—they wanted to delete 11(1)(a)—that's the arrangement point—and also delete 11(3). But can I suggest to you that it's the same problem as we've seen in a range of other provisions of this bill, where charities are reading this and seemingly not sharing the understanding that you bring to bear. You're saying you want to read 11(3) as a limitation but, as Senator McAllister has pointed out, the first three words are, after all, 'without limiting subsection 1', which tends to suggest that it is hardly a limitation. We would be assisted if you could take that on notice.

Ms Inverarity: We're certainly happy to do that.

Answer

The policy intention is for subsection 11(3) to limit subsection 11(1) – that is, there must be both a circumstance set out in subsection 11(1) and the knowledge or expectation on the part of both the person and the foreign principal in subsection 11(3) for a person to be *undertaking an activity on behalf of a foreign principal*.

As the Committee has noted, the words 'without limiting subsection (1)' could give rise to some confusion as to the combined effect of subsections 11(1) and 11(3). Subsection 11(3) could be amended to provide directly that a person *only* undertakes an activity on behalf of a foreign principal within the meaning of subsection 11(1) if both the person and the foreign principal knew or expected that the person would or might undertake the activity, and that the person would or might do so in circumstances falling within sections 20, 21, 22 or 23 of the Bill (whether or not the parties expressly considered the existence of the scheme).