



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

General Secretariat

15 June 2018

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

By email: pjcis@aph.gov.au

Dear Sir/Madam

Review of the Foreign Influence Transparency Scheme Bill 2017 Supplementary submission to Submission 12

This submission is from the Australian Catholic Bishops Conference (ACBC) and is made in response to an invitation from the Parliamentary Joint Committee on Intelligence and Security to provide a supplementary submission on amendments proposed by the Attorney General, the Hon Christian Porter MP.

The ACBC notes with concern that, more than four months after our initial submission, groups and individuals with concerns about this Bill have been given three and a half working days to comment on detailed government amendments.

The ACBC continues to support the objective of the *Foreign Influence Transparency Scheme Bill 2017* (the Bill) “to improve the transparency of activities undertaken on behalf of foreign principals”, but has concerns about a number of provisions.

Despite assurances from the Government that the problems we identified in our original submission would be fixed, the amendments proposed by the Government do not fully address our concerns. The Government’s proposed new exemption for religion does not offer certainty or clarity and so may have the effect of discouraging legitimate public policy comment by religious groups.

Concerns over the initial Bill

The ACBC raised a number of concerns over the initial Bill:

1. The Explanatory Memorandum to the Bill suggested that the Catholic Church in Australia is affiliated with the foreign government of “Vatican City”. The Catholic Church in Australia is not affiliated with Vatican City State nor any other foreign government.
2. The exemption for religion was drafted based on the incorrect belief that the Catholic Church in Australia acts on behalf of a foreign government, i.e. Vatican City State. Given the Catholic Church in Australia does not act on behalf of a foreign government, the clause would have conferred no exemption on members of the Catholic Church in Australia.
3. The exemption for religion did not address the potential for the Pope or other Church officials being interpreted as a “foreign principal” under paragraph (e) of the definition, i.e. “an individual who is neither an Australian citizen nor a permanent Australian resident”.
4. Consequently, the Bill potentially required every Catholic or Catholic-controlled legal entity advocating or communicating in relation to public policy to register and report on their activities under the terms of the Bill.
5. The Bill is very broad in scope and tighter definitions would help focus the draft legislation to help avoid unintended consequences. The Bill would add red tape where it is not needed to achieve its objective and may create an unintended and unwarranted chilling effect on legitimate public policy advocacy.

Government amendments – exemption for religion

The Government has proposed a number of amendments, including the following new clause which is to give an exemption for religion:

(49) Clause 27, page 25 (lines 7 to 19), omit the clause, substitute:

27 Exemption: religion

A person is exempt in relation to a religious activity the person undertakes, in good faith, on behalf of a foreign principal.

[exemption: religion]

The exemption is poorly crafted and so does not give certainty. Without clarity, Church officials may be required to provide proof on each occasion that something that is said or written is not done on behalf of a foreign principal or, if it is, that it is a “religious activity” and done “in good faith”.

“Religious activity” is not defined, which means it is difficult to understand how broadly or narrowly the exemption would apply. For example, if a bishop or a Catholic agency wrote a piece in a daily newspaper with a philosophical (rather than theological) argument on government policy, would that be classified as “religious activity”? Is the test the status of the actor; or the ‘intrinsic nature’ of the activity (if that can be

determined - defined by what test?); or the language or frame of reference used? If a Catholic agency lobbied for improvements to funding to increase the stock of social housing, would that be a religious activity?

Religious activity in the Australian community is much broader than worship and private prayer. The fundamental character of religious belief is public, which is why people of faith build houses of worship, undertake good works and comment on government policy. For example, the Catholic Church has extensive involvement in providing school education, healthcare and welfare services and advocates in the interest of the common good in those and other areas.

‘Communications activity’ (clause 13 of the Bill) remains of potential concern for a Church committed to teaching and preaching to the public. The amendments proposed do not reduce its scope if the Church were caught by the legislation.

There is still an assumption in the proposed government amendment that the Catholic Church in Australia might undertake a religious activity on behalf of a foreign government. The term “foreign principal” means foreign government, a foreign public enterprise, a foreign political organisation or a foreign government related individual. The ACBC explained in detail in its earlier submission that Catholic agencies in Australia do not relate to Vatican City State – a foreign government – but to the Holy See, which is part of the universal Catholic Church.

The definition of “foreign government” includes “foreign government related entity” and “foreign government related individual”. It is unclear if these definitions would include the Pope or other senior church officials. Would these definitions include Catholic agencies with close links to the Holy See, like Catholic Mission and Caritas Australia?

To address these concerns, the ACBC suggests that more certainty would be provided if the exemption for religion was amended to read:

“A person is exempt in relation to an activity the person undertakes in good faith primarily for religious purposes.”

Or :

“A person is exempt in relation to an activity the person undertakes in good faith in accordance with the doctrines, tenets, beliefs or teachings of the person’s religion or primarily for the purposes of that religion.”

Conclusion

The ACBC is disappointed that the government’s proposed amendments do not give more certainty to religious organisations. An exemption which uses undefined terms like “religious activity” does not assist in providing clarity to religious groups. The ACBC

remains concerned about additional red tape and the chilling effect this legislation may have on legitimate public comment by civil society.

I would be happy to answer any questions you may have. I can be contacted via Mr Jeremy Stuparich, Public Policy Director at the ACBC [REDACTED]
[REDACTED]

Yours sincerely in Christ

(Most Rev.) Anthony Fisher OP
Archbishop of Sydney
Vice President, Australian Catholic Bishops Conference