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

Go8 Submission to the Foreign Influence Transparency Scheme Bill 2017

The Go8 welcomes the opportunity to provide input into the Committee's consideration of this Bill. Please note this submission represents the views of the Go8 network; member universities may also make their own, more detailed submissions.

The Go8 supports the need for Government to ensure adequate safeguards for our national political and democratic processes.

However, this need is too important to allow hastily-compiled legislation to cause unintended damage to Australia's high performing higher education and research sector. If this Bill is allowed to progress in its current form, it could severely limit Australian academics in their capacity to carry out essential and mandated activities, or even provide expert advice in the public domain in response to legitimate public interest.

We also cannot allow rushed drafting processes to fundamentally restrict the rights of *all* Australians – including those employed by Australian universities - to legitimately participate in the democratic process.

The Go8 therefore recommends:

- **That the Committee recommend that the Government delay the introduction of this legislation to allow the proper and essential consultation processes to occur.**
- **That the Committee recommend the inclusion of "genuine academic activities" among the exemptions, to ensure that the teaching, learning, research, collaboration, innovation, scholarship and social responsibility initiatives that underlie the effective operations of Australia's democracy are not inadvertently harmed.**

The *Foreign Influence Transparency Scheme Bill 2017* (hereafter referred to as the "Bill") will require registration by Australians undertaking certain activities involving foreign principals.



The Bill notes that the scheme is intended to:¹

- Require persons undertaking certain activities on behalf of a foreign principal to register;
- Require registrants to disclose information about the nature of their relationship with the foreign principal and activities undertaken pursuant to that relationship (both at the initial point of registration and on an ongoing basis for the duration of the relationship);
- Place additional disclosure requirements on registrants during elections and referendums;
- Allow some information to be made publicly available, to serve the transparency purposes of the scheme;
- Be accompanied by charges (for cost recovery purposes);
- Be supported by powers, including to monitor compliance, conduct audits and collect charges; and
- Be supported by criminal offences for non-compliance.

While the Go8 acknowledges and supports the need to ensure adequate national security protections, it is critical that the measures be balanced against the global reality of 21st century operations.

It is also critical that legislation to ensure this protection is adequately drafted so as not to have unintended or perverse consequences, as this Bill currently has.

We note with some concern that yet again we are being asked to consider significant policy changes without the careful and considered processes necessary to prevent inadvertent damage to unintended industries or areas of Australian society.

In April 2017, the unexpected announcement of changes to Temporary Work (Skilled) Visas (subclass 457), subsequently described as a “scorched earth policy”² by the *Australian Financial Review*, caused widespread and public outcries from organisations as diverse as the Business Council of Australia,³ technology entrepreneurs,⁴ and Australian universities. This could easily have been avoided had the Government employed standard consultation processes during its development.

The purpose behind the Foreign Influence Transparency Scheme Bill, and the associated Bills contained in this package, are too important to allow them to cause unnecessary, damaging and divisive impacts on our society. We especially cannot allow this to happen due to a simple lack of process.

The Go8 therefore urges the Committee to recommend that the Government delay the introduction of this Bill to allow the proper and essential processes to occur, including adequate consultation, to ensure the creation of a strong, coherent, nuanced, targeted and effective Bill.

¹ http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6018_ems_2c964908-abee-447b-a96d-16401cf291fe/upload_pdf/655770.pdf;fileType=application%2Fpdf

² <http://www.afr.com/leadership/innovation/malcolm-turnbull-overreaches-on-457-visas-and-risks-his-longterm-legacy-20170420-gvp1bf>

³ <http://www.afr.com/business/business-council-of-australia-attacks-new-visa-system-as-ceos-shafted-20170420-gvokd6>

⁴ <http://www.afr.com/news/politics/national/tech-sector-splits-on-visa-changes-after-457-dumped-20170419-gvnurd>



Recommendation: that the Committee recommend that the Government delay the introduction of this legislation to allow the proper and essential consultation processes to occur.

Higher education and research are both highly internationalised industries. Many students who choose to travel to Australia to undertake their education do so under arrangements financed by foreign entities or governments, in the form of scholarships, bursaries and so on. The same is true for many renowned experts who travel to Australia as visiting scholars, guest lecturers, keynote speakers, and so on. Australia has been a key beneficiary of this process, with our international education export sector recently estimated at around \$28 billion in the 2016-17 financial year.⁵ Research is also increasingly collaborative, involving partnerships and related co-funding arrangements with overseas organisations, industry or governments. Such funding could be used to support a range of investigative work into areas as broad as democracy or democratic principles, international human rights, alternative energy sources, coal seamed gas, economic policy and so on. The value derived from these projects is not limited to the injection of much-needed funds into the Australian economy; it also has the potential to enhance and promote the quality of Australian's lives. Examples include:

- Monash University's partnership with Janssen Biotech on treatments for rheumatoid arthritis has the potential to assist a crippling disease suffered by around 400,000 Australians.⁶
- Research conducted by the University of Melbourne and Royal Melbourne, supported by funding from DARPA, the US Department of Defense's research unit, on brain-machine interface technology that could be used to help para- and quadriplegics walk again.⁷
- A collaboration between Boeing and The University of Queensland will see research projects investing cabin disease transmission, unmanned aircraft and autonomous systems, and environmental monitoring technologies.⁸
- Researchers at the Australian National University, in partnership with scientists at UC Berkeley and Ecole Polytechnique Fédérale de Lausanne, helped to develop a new silicon solar cell that promises cheaper manufacturing processes and better power output.⁹

Clauses (e) and (f) as currently listed in the definition of "Undertaking activity on behalf of a foreign principal" – ie incorporating both "collaboration" and "funding or supervision" arrangements with the foreign principal – have the potential to restrict or prohibit research collaborations such as these from occurring in Australia to the benefit of our society and economy.

Sometimes, securing these research partnerships also requires institutions to lobby funding bodies – such as the Australian Research Council or National Health and Medical Association Council (NHMRC) – and/or government departments for reciprocal funding or support in kind. As such, this legislation is likely to capture

⁵ <https://ministers.education.gov.au/birmingham/address-australian-international-education-conference-hobart>

⁶ https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiy59fn6OLYAhVHkZQKHVarDYQQFgggMAA&url=http%3A%2F%2Fwww.afr.com%2Fnews%2Fianssen-biotech-funds-monash-rheumatoid-arthritis-research-20170601-gwibpz&usg=AOvVaw1r_FBj8uaCe-SdNPkW1JX

⁷ <https://pursuit.unimelb.edu.au/articles/moving-with-the-power-of-thought>

⁸ <https://www.uq.edu.au/news/article/2016/09/boeing-partnership-give-uq-students-and-researchers-new-altitude>

⁹ https://cecs.anu.edu.au/system/files/private/engineering_and_computing_research_snapshot.pdf



an extensive range of routine academic activities conducted by universities, and their associated peak bodies, on a day to day basis. Depending on the requirements of the legislation, this could potentially place a considerable reporting burden on these institutions that is disproportionate to the risk of those activities.

Estimates suggest that the stock of knowledge generated by university research in 2014 was around \$160 billion, equivalent to approximately 10% of Australian GDP.¹⁰ Much of this research involves partnerships with international organisations. This could all be potentially at risk, depending on the sensitivity of the measures contained within the Bill.

Yet we note that research and academic activity does not currently appear among the activities listed for exemption. Traditionally, University research and academic activity plays a significant role in helping shape public policy. In addition, routine research projects are increasingly supported by funding from international organisations. This creates a legitimate concern that the Bill will impose a regulatory burden on a large volume of routine activity that is disproportionate to the risks of that activity.

This issue can be demonstrated by way of the following scenario:

- (a) A research project is **funded by** (cl 11 of the Bill) a **foreign principal** (cl 10 of the Bill) which is either a **foreign business** (cl 10 of the Bill) or an individual who is neither an Australian citizen nor a permanent resident of Australia.
- (b) The research involves a matter which either may be the subject of a **federal government decision** (clauses 12(1)(b), 12(3) and 12(4) of the Bill) or may be a matter which is addressed by the **platform of a registered political party** (clauses 12(1)(d) and 12(3) of the Bill);
- (c) The researcher undertakes a **communication activity** (cl 13 of the Bill) in relation to that research; and
- (d) The researcher has a **belief** (cl 14 of the Bill) that that activity could affect either a federal government decision or the formulation of the platform of a registered political party.

In the above scenario, the researcher has engaged in a **registrable activity** (cl 21 of the Bill) under the proposed legislation and none of the currently proposed exemptions apply.

The reality is that academics routinely engage in scenarios such as this while conducting genuine and legitimate academic activities. Indeed, universities are obliged through the *Higher Education Standards Framework (Threshold Standards) 2015*, to have a “clearly articulated higher education purpose that includes a commitment to and support for free intellectual inquiry in its academic endeavours”.¹¹

This will necessarily involve public discourse about issues that are, or are likely to be, either the subject of a federal government decision or addressed by the platform of a registered political party. These could include areas such as public health, bushfire management, defence expenditure, border protection, deforestation, wind farms, euthanasia, invasive species control, water flows, medicinal cannabis, sexual assault and harassment, school funding, tax concessions, and so on.

¹⁰ Deloitte Access Economics, *The Importance of Universities to Australia's Prosperity*, Oct 2015, p.vii

¹¹ https://www.legislation.gov.au/Details/F2015L01639/Html/Text#_Toc428368878



Indeed, the government itself recognises the importance of academics participating as experts in public policy debates, through the Australian Research Council's Engagement and Impact Exercise, due to commence in 2018. This process will financially recognise and reward institutions with academics who can best demonstrate the impact of their research on end users, including through changes to public policy that benefit the community.

For these reasons, the Go8 urges the Committee to seek an express exemption where the relevant activity is undertaken for genuine academic or university purposes, to ensure that all university staff undertaking their legitimate activities are included, regardless of their status as "academics". We advocate that the term "academic purposes" should be defined consistently across both this Bill and the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform Bill 2017, using the definition provided below, and to include:

"the bona fide publication or communication of:

- (a) research;*
- (b) an opinion;*
- (c) a comment; or*
- (d) other activities;*

in the context of a discipline in which the author has recognised expertise, or where the activity is undertaken in the fulfilment of a legitimate university purpose.

Recommendation: The Go8 urges the Committee to recommend the inclusion of "genuine academic activities" among these exemptions, to ensure that the teaching, learning, research, collaboration, innovation, scholarship and social responsibility initiatives that underlie the effective operations of Australia's democracy are not inadvertently harmed.

Yours sincerely

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