Submission by VOICE Australia

To the Senate Foreign Affairs, Defence and Trade Legislation Committee for its Inquiry into
Australia's Foreign Relations (State and Territory Arrangements) Bill 2020

22 September 2020

What are some exploitable loopholes in the Bill?

We understand the thought process of officials of the Vietnamese regime, which might in turn be similar to that of Chinese officials, therefore we read the Bill asking ourselves the above question. We were able to identify 3 potential loopholes allowing the use of entities and arrangements outside the scope of this Bill and of other Australian laws. Our submission focuses on these.

We would welcome an opportunity to appear at a Hearing.

Widen definition of "State/Territory entities" (Section 7)

The current definition specifically excludes "a corporation that operates on a commercial basis" and "hospital" (Section 7(g) and 7(h)).

While there are good reasons for that, it is not difficult to envisage scenarios where commercial corporations and hospitals are involved in arrangements which impact Australia's foreign relations or foreign policy.

But they are commercial entities, so how would the government learn what arrangements they have, and what can it do about such arrangements?

> ### Recommendation 1, on "State/Territory entity"
> - I**nclude corporations and hospitals** in definitions of "State/Territory entity" even if they operate on a commercial basis;
> - **Empower the Minister to, on a non-coercive basis, (i) Require information** from selected ones on possible arrangements, and **(ii) Provide an advisory notice to them** outlining the Minister's concerns related to Australia's foreign relations or foreign policy.

While the above powers are non-coercive, they do serve useful purposes.

Widen definition of "foreign entities" (Section 8)

The current definition in Sect 8(j) says that an entity external to Australia can be prescribed to be a foreign entity, but Sect 8(k) specifically excludes corporations.

There are Communist Party of Vietnam wings in not only state-owned corporations, eg. Vietnam Electricity EVN[1], but also in many commercial corporations[2].

We believe that the key test is whether an arrangement with a foreign commercial corporation impacts on Australia's foreign relations or foreign policy. If it does then it should be in scope of the Bill, even if that corporation is not formally associated with a foreign government.

Recommendation 2, on "foreign entities"
Include "a corporation that operates on a commercial basis" in the definition of a "foreign entity", provided that the Minister has reason to believe that an arrangement with it can potentially impact Australia's foreign relations or foreign policy.

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[1] The 10th July 2020 news report of the conference of the CPV wing of EVNHanoi, electing its executives for the 2020-2025 term. EVNHanoi is 100% owned by the state-owned Vietnam Electricity, EVN:
> *http://evnhanoi.vn/tin-tuc-evnhanoi/tin-hoat-dong/6678-dai-hoi-dai-bieu-dang-bo-tong-cong-ty-dien-luc-tp-ha-noi-lan-thu-iii-nhiem-ky-2020-2025-thanh-cong-tot-dep*

[2] One of many examples of commercial corporations having CPV wings is MEDLATEC Ltd, "Medical Laboratory And Technology Company". Here is the [Vietnamese-language] 15th May 2020 news report about the conference of its CPV wing, electing its executives for the 2020-2025 term
> *https://medlatec.vn/tin-tuc/to-chuc-thanh-cong-dai-hoi-dang-bo-cong-ty-medlatec-lan-thu-i-nhiem-ky-2020-2025-s1-n18162*

Remove the "written" requirement in definitions of "arrangement" and "subsidiary arrangement" (S. 9, 12, and 13)

The above requirement can be a loophole.

Shenzhen Zhenhua, the group behind the recent leaked Overseas Key Information Database (OKIDB)[3], is believed to have a group located in Australia collecting local information. It is easy to imagine a scenario where both groups are nominally operating commercially and their arrangement is verbal only.

What is important is not whether an arrangement is written, but whether there are reasons to believe that it exists. If there are, and it potentially impacts on Australia's foreign relations or foreign policy, then leaving it out of scope of the Bill may not be the best for Australia's foreign relations or policy.

But if it is not written then how does the government know whether it exists and what it says? Who carries the burden of proof? We believe that it is reasonable to put this onus on the entities rather than the Minister. Generally, this Bill does not affect natural persons' human rights, and it is not feasible for the Minister to prove its existence but the entities can readily show that they are not taking actions consistent with there being an arrangement.

Recommendation 3, on the "written" requirement
- **Remove the requirements of "written"** in the definition of "arrangement", "subsidiary arrangement", and variation thereof;   - **Empower the Minister to non-coercively seek information** from entities whether an arrangement exists, written or not;   - **Place the onus on the entities** rather than the Minister, to show that a non-written arrangement does not exist.

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[3] Paper "Chinese Open Source Data Collection, Big Data, And Private Enterprise Work For State Intelligence and Security: The Case of Shenzhen Zhenhua" by Christopher Balding, Robert Potter et. al. PDF from:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3691999

About VOICE Australia

VOICE originated from Australia and is now a non-profit based in the United States. In its early work in the 90s, it focused on refugee advocacy. It has now broadened its work to civil society, including training civil society advocates and assisting with their practical work.

VOICE Australia has members across several Australian States, it focusses on civil society, such as arranging for VOICE interns to gain internships in Australia to learn how its democracy operates.

We thank the Committee for the opportunity to make this Submission.

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