



The Australian Industry Group
Level 2, 441 St Kilda Road
Melbourne VIC 3004
PO Box 7622
Melbourne VIC 3004
Australia
ABN 76 369 958 788

15 June 2018

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

Dear Secretary

REVIEW OF THE FOREIGN INFLUENCE TRANSPARENCY SCHEME BILL 2017

The Australian Industry Group welcomes the opportunity to make a short submission on the Foreign Influence Transparency Scheme Bill 2017, in light of the amendments proposed by the Government and released by the Parliamentary Joint Committee on Intelligence and Security on 8 June 2018. We welcome the Government's good faith effort to respond to and address the concerns that industry expressed about the initial Bill. However, even in its revised form the Scheme is sufficiently ambiguous that it would be damagingly burdensome and a hindrance to the everyday work of industry organisations like Ai Group on behalf of business. If the Scheme is to proceed, further revisions are needed to eliminate ambiguity and make the scheme operable.

The Australian Industry Group, together with our partner organisations, represents the interests of more than 60,000 businesses employing more than 1 million staff. These are businesses in Australia of all sizes, in a range of sectors including manufacturing, construction, engineering, transport and logistics, labour hire, mining services, the defence industry, civil airlines and ICT. We conduct a range of activities for members and on behalf of industry, including advice and training, networking, and engagement with all sides of politics, all levels of government, wider stakeholders, the media and the community.

The original Bill would have caught up Ai Group because many businesses in Australia have partial or complete foreign ownership, and because the definitions of 'registrable activities' including lobbying and communications were very wide. The consequences of registration would have been a significant administrative burden, with Ai Group having to inquire about and update the government on the ownership status and relevant changes thereto of many thousands of businesses. This would make it significantly harder for us to carry out our role as an industry representative.

The Government's proposed amendments seek to alleviate these concerns by:

- narrowing the focus to include companies with significant ownership by a foreign government, but not private foreign-owned companies; and
- introducing an exemption for industry representative bodies.

The latter exemption, proposed Section 29A, reads:

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) the person is an entity formed in Australia, or incorporated under a law of the Commonwealth, a State or a Territory (an Australian entity); and
- (b) the person's purpose is to represent the interests of business or a particular sector of business or industry; and



The Australian Industry Group
Level 2, 441 St Kilda Road
Melbourne VIC 3004
Australia
ABN 76 369 958 788

- (c) the person has members who are also Australian entities; and
- (d) the activity is, or relates primarily to, representing the interests of business, or the particular sector, as a whole.

This exemption is well intended. However, clause (d) is extremely ambiguous in the context of the day-to-day activities of an industry representative body.

- Australian industry is often fragmented. There are sectors or subsectors which are predominantly foreign government owned, particularly where there are only one or two businesses in the sector. Do representations on behalf of such a subsector satisfy clause (d)?
- Ai Group frequently arranges forums and meetings for members with, makes submissions on behalf of members to, or forwards feedback from members to, relevant Departments and Ministers. While this is part of our function as a broadly representative industry body, individual issues raised or feedback provided may relate to a narrow subset of members or a single member. For instance, in recent consultations around an environmental issue Ai Group forwarded feedback on an aspect that only impacted one company, which happens to have majority ownership by the Japanese government. At what point does such activity fall outside clause (d)?

Unless the issue is clarified Ai Group and other industry representative bodies will have to grapple with the interpretation of these matters constantly, with the likely result that we cannot provide the support and representation that industry should be able to expect.

There are at least two ways to clarify the issue.

The simplest and most preferable is to delete clause (d), thus extending the exemption to activity by any Australian entity that has the purpose of representing the interests of business or a particular sector and has members that are also Australian entities. This would enable industry bodies to know whether they satisfy the test by dint of their foundational legal documents and their existing membership rolls, rather than requiring daily self-scrutiny of commonplace representational activities.

A lesser alternative would be to provide greater guidance in the Bill or the Explanatory Memorandum on the kinds of activities that are included and excluded by clause (d). This guidance should be developed in close consultation with industry. Given the Government expressed preference to pass the legislative package of which this Bill forms part before the imminent byelections, there would be little time for such consultation. We therefore strongly urge the deletion of clause (d).

Should you wish to discuss the matters raised in this letter, please contact our adviser Tennant Reed

[Redacted contact information]

Sincerely yours,

Innes Willox
Chief Executive