

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



AUSTRALIAN
COUNCIL
FOR
INTERNATIONAL
DEVELOPMENT

Submitted via email: pjcis@aph.gov.au

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Dear Committee Secretary

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

The Australian Council for International Development (ACFID) appreciates the opportunity to contribute a supplementary submission to this important public consultation on the proposed Foreign Influence Transparency Scheme (FITS) Bill 2017.

ACFID unites Australia's non-government organisations involved in international development and humanitarian action to strengthen their collective impact against poverty. ACFID's purpose is to lead and unite our members in action for a just, equitable and sustainable world. Further information about ACFID and a full list of ACFID Member Organisations is available in our original submission of 15 February 2018¹.

ACFID members routinely work with foreign governments, informing our policy and advocacy positions

As international development organisations, ACFID members **routinely work with partner governments in our region and across the world**, to deliver international development programs and humanitarian assistance. This close collaboration with foreign governments makes us particularly interested in, and exposed to, any reform attempting to illuminate work with or alongside foreign principals.

The Australian Government, through the Department of Foreign Affairs and Trade (DFAT), funds much of our members' international development work, and encourages partnership with the communities and governments where our members work. DFAT and the respective Government ministers recommend we use examples of this work in our public communication and advocacy in Australia.

ACFID's Code of Conduct – which has been named “international best practice”² by the Australian Government's Charities and Not for Profit Commissioner, encourages ACFID members to partner with local communities and governments, and to faithfully represent the voice and needs of recipient communities in our policy, advocacy and campaigning work here in Australia.

¹ ACFID's original submission to the Review of the Foreign Influence Transparency Scheme Bill can be found at: https://acfid.asn.au/sites/site.acfid/files/resource_document/ACFID%20Submission%20-%20FITS%20Bill.pdf

² 2017. Williams, Wendy. Pro Bono. 'Susan Pascoe Appointed President of ACFID'. Accessed 15 June 2018. Available at: <https://probonoaustralia.com.au/news/2017/11/susan-pascoe-appointed-president-acfid/>

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united against poverty

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Principles to guide proposed amendments

As a principle, ACFID supports transparency so that the public can understand who is seeking to influence Government decision making. However, we are concerned that if this Bill is passed without sufficient accommodation for the ordinary activities of international development and humanitarian organisations, it is likely to have **a chilling effect on legitimate and constructive advocacy and public debate**.

If there is any reform to Australia's political and governmental processes that may affect charities and their advocacy work, **ACFID strongly recommends the following principles be upheld:**

1. Charities and NFPs don't face a greater compliance burden than they do presently;
2. Charities and NFPs are not subject to more extensive regulatory controls and administrative requirements or criminal offences than other third parties (e.g. businesses and industry associations);
3. A clear and precise regime that is unambiguous. Charities and NFPs should not be left wondering what parts of a regime apply to them and when they apply;
4. The right of charities and NFPs to use funding (including international funding) for issues-based advocacy is not restricted;
5. Charities and NFPs are free to cooperate on issues-based advocacy to advance issues of public interest, including by working with non- Australian citizens and non-permanent Australian residents.

Recommendations to ensure Australian international development work is not captured

We have seen the proposed parliamentary amendments from the Attorney General to the Committee. While the proposals do go some way to clarifying and narrowing the scope of the legislation, many of our concerns raised in our original submission still hold true, and there are still a few key sections that could capture routine program, policy and advocacy work of international development NGOs.

We therefore propose the following amendments to the Bill which would help to address our concerns:

1. Explicitly define 'political organisation' to make clear that it does not include international charities or advocacy groups

We are pleased to note that Recommendation 6 in the Committee's report on the Espionage and Foreign Influence (EFI) Bill recommends that 'foreign political organisation' be properly defined, suggesting that this would exclude international charities or advocacy groups. There is no proposed counterpart amendment to the FITS legislation.

Many ACFID member organisations are part of international confederations or alliances, or routinely work with like-minded global organisations or groups to advance issues of global importance. We address issues that transcend national boundaries such as poverty, gender equality, climate change and responding to humanitarian crises. It is therefore appropriate that ACFID member organisations collaborate with international partner organisations and advocacy groups – some of which may be defined as political organisations. As has been done for the EFI Bill, we propose that the FITS Bill makes it clear that 'political organisation' does not include international charities or advocacy groups.

2. Narrow the definition of 'acting on behalf of' by deleting 11(1) (a) and 11(3)

We are pleased to see that the Attorney General recommends Section 11(1) be amended to make it clear that collaboration with a foreign principal and the receipt of funding from them do not mean that a civil society group's activities will be considered to be 'on behalf of' the foreign principal.

However, 11(1) retains the clause that “(1) A person undertakes an activity on behalf of a foreign principal if the person undertakes the activity: (a) under an arrangement with the foreign principal”. Section 11(3) has also not been deleted, which provides that even knowledge by the foreign principal that lobbying or other activity to influence government policy might take place by the civil society group is the basis for an activity being determined to be ‘on behalf of’.³

If 11(3) is not deleted, then it is conceivable that should a civil society group make a presentation to a foreign government that includes a plan of its future work, then it must register as an agent of that government if it then undertakes those activities.

As highlighted above, ACFID members work closely with partner governments, often developing program, policy and advocacy plans in conjunction with recipient governments and the Australian Government. Recipient governments see the value of Australian funded development initiatives in their countries and, along with ACFID members, have an interest in seeking positive changes in Australian development policy and Official Development Assistance (ODA) funding.

3. Introduce an exemption from registration requirements for charitable and public interest, not-for-profit groups.

Even with narrowing the definitions as recommended above, ACFID members are concerned about the Register for a number of reasons: the burden of registration; the significant criminal penalties for non-compliance; and the reputational and other consequences of being registered as acting for a foreign principal.

There is an exemption in FITS from registration requirements for commercial or business pursuits, and also for professional industry associations, **but not for charitable and public interest work**. This is prejudicial and not based on any evidence that civil society groups pose a greater threat to the integrity of public debate or political discussion than corporations or industry groups. As explained in Principle 1 above, ACFID maintains that charities and NFPs should not be subject to more extensive regulatory controls and administrative requirements or criminal offences than other third parties (e.g. businesses and industry associations).

ACFID members are rightly concerned about the reputational risks and consequences of registering as acting for a foreign principal, when they are in fact not acting at the foreign principal’s direction but in pursuit of their organisational mission. In many countries in which we work, we see a closing of civil society space – with examples of global charities being labelled as foreign actors and barred from working in certain countries. When similar language is being used in a mature democracy like Australia, this emboldens other countries to further close down their civic and democratic space and severely hinders Australia’s ability to challenge this harmful trend – for example through our current seat on the Human Rights Council.

In light of these risks, we therefore recommend **an exemption for ACNC-registered charities and public interest, not-for-profits**, comparable to the exemptions introduced for business or commercial pursuits, and for industry associations.

³ Section 11(3) states: *Without limiting subsection (1), a person undertakes an activity on behalf of a foreign principal if both the person and the foreign principal knew or expected that: (a) the person would or might undertake the activity; and (b) that the person would or might do so in circumstances set out in section 20, 21, 22 or 23 (whether or not the parties expressly considered the existence of the scheme).*

We note with thanks the exemption for Humanitarian response, though are still to assess whether the exemption is sufficient for the humanitarian response work ACFID members do in slow-onset crisis work, such as the current famine in East Africa, or the civil war in Yemen.

This is important work that should not be rushed

Lastly, we would encourage the Committee **not to rush** through amendments to this important piece of legislation. It has been difficult for ACFID and our members to fully assess the range of amendments proposed by the Attorney General, and to respond back with comment with only a week's turnaround time.

ACFID members are still trying to evaluate the possible impacts on their day to day work, and will ultimately need to seek legal advice on the proper interpretation and application of the broad and all encompassing amendments. Compounding this lack of certainty is the interplay with the Espionage and Foreign Interference Bill, and the inconsistencies between amendments proposed to the EFI Bill and to the FITS Bill.

ACFID urges the Committee to continue with your thorough consultation on any reforms targeting Australia's political and governmental process and not to rush through legislation that may inadvertently restrict or undermine our democracy. We commend you for being sensitive to the impacts changes may have on Australia's civil society – particularly ACFID member NGOs who routinely work in, and with, partner governments in our region and across the world.

We have collected a number of **case studies from our members** that highlight the confusion and possible impact of the proposed amendments to their work. ACFID would be happy to provide these case studies as well as additional clarity on any of the statements contained within this submission. Requests can be directed to Gareth Beyers, Government Relations Adviser, ACFID [REDACTED]

Regards,

Marc Purcell

Chief Executive Officer