



D18/73962

13 June 2018

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

By email: [pjcis@aph.gov.au](mailto:pjcis@aph.gov.au)

Dear Secretary

#### **Privilege implications of FIT scheme**

We understand that the Attorney-General has provided the PJCIS with proposed amendments to the FIT Scheme Bill, and that the committee would welcome our views on amendments dealing with the interaction between that scheme and parliamentary privilege.

In his covering letter, the Attorney-General wrote:

##### **Interaction with Parliamentary privilege**

The Committee has heard evidence, and received submissions, about the interaction between the proposed Scheme and Parliamentary privilege. To ensure clarity, the amendments amend the Bill to insert a new section which clarifies the interaction between the Bill and certain privileges and immunities.

Proposed section 9A makes it explicit that nothing in the Bill affects powers, privileges and immunities relating to each House of Parliament, their members and committees, as well as the law relating to legal professional privilege. The section also limits the application of the Secretary's powers to obtain information and documents under sections 45 and 46 where the information or documents are subject to parliamentary privilege or legal professional privilege.

The amendment is proposed in the following terms:

##### **9A Relationship of this Act to certain privileges and immunities**

###### *Parliamentary privilege*

(1) This Act does not affect the law relating to the powers, privileges and immunities of any of the following:

- (a) each House of the Parliament;
- (b) the members of each House of the Parliament;
- (c) the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

*Legal professional privilege*

(2) This Act does not affect the law relating to legal professional privilege.

*Effect on Secretary's power to obtain information and documents*

(3) Without limiting subsections (1) and (2):

- (a) the Secretary's powers under sections 45 and 46 do not extend to requiring a person to give information, or produce documents or copies of documents, if:
  - (i) the information or documents are protected by a privilege or immunity mentioned in those subsections; or
  - (ii) complying with the requirement would involve a breach of a privilege or immunity mentioned in those subsections; and
- (b) the person need not comply with any purported requirement to that effect.

***[parliamentary privilege and legal professional privilege]***

This amendment appears to largely address the concerns raised in our earlier submissions, particularly by placing appropriate boundaries on the Secretary's powers under the bill, and we appreciate the Attorney-General bringing it forward.

Although the interpretation of legislation is a matter for the courts, these provisions endorse an interpretation that respects the traditional scope of privilege. Moreover, the protections recognised by these provisions will be bolstered by the prohibition in s 16 of the *Parliamentary Privileges Act 1987* against forensic examination of parliamentary proceedings in courts and tribunals. As we noted in our earlier submissions, with the appropriate acceptance of parliamentary privilege, it will be a matter for the Houses as to how best the protection is implemented when matters arise.

We also note another amendment that proposes to narrow the definition in clause 11 of 'undertaking activity on behalf of a foreign principal', to remove reference to activities undertaken 'in collaboration with' a foreign principal. In our view, the breadth of the concept of 'collaboration' in the original bill was potentially problematic for interactions with members and senators, and the narrowing of the definition addresses those concerns.

We thank the committee for the opportunity to comment on these matters, and would be happy to provide any further assistance.

Regards,

David Elder  
Clerk of the House

Richard Pye  
Clerk of the Senate