



15 February 2018

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

Dear Committee Secretary

THE AUSTRALIAN INSTITUTE OF INTERNATIONAL AFFAIRS

SUBMISSION TO THE INQUIRY INTO THE FOREIGN INFLUENCE TRANSPARENCY SCHEME BILL 2017

The Australian Institute of International Affairs (AIIA) is an independent, non-profit organisation promoting interest in and understanding of international affairs in Australia. It was formed in 1924 and established as a federal body in 1933. It is the only nationwide organisation of its kind in Australia. It is financed by members' contributions, a small government subvention and tax deductible donations from individuals and businesses.

The AIIA consists of a number of independent branches, which are located in seven Australian states and territories, and a National Office in Canberra. Precluded by its constitution from expressing any opinion of its own about international issues, it provides a forum for the presentation, discussion and publication of a wide range of views on those issues, and also works to educate the community about them. One of the key areas of focus is on youth, including schools programs, careers fairs, internships and young professionals' networks around the country.

Given its interest in international affairs, and its important role in the dissemination of information about, and views on, these matters, the AIIA has a direct interest in the proposals contained in the *Foreign Influence Transparency Scheme Bill 2017 (the Bill)*. The AIIA therefore welcomes the opportunity to provide this submission to the Parliamentary Joint Committee on Intelligence and Security.

The stated aim of the Bill is to provide 'transparency for the Australian Government and Australian public about the forms and sources of foreign influence in Australia'. Indeed, the Bill forms part of a suite of reforms designed to address concerns regarding undisclosed foreign influence on public opinion and government policy. The AIIA supports these broad policy goals. It is, however, concerned that the Bill fails to advance them in the most appropriate way.

The AIIA begins with the basic proposition that the majority of foreign influence in Australian public policy is benign, and can have significant positive effects on social and political development through cross-cultural engagement and understanding. Certainly, the objective analysis of that influence, whether benign or not, benefits society generally; and this is what the AIIA enables. But objective analysis is impossible without knowledge of the views, objectives and capabilities of governments and other entities which might impact on Australia.



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The Bill introduces a registration scheme for individuals or entities undertaking certain activities on behalf of a foreign principal. Proposed section 10 of the Bill defines 'foreign principal' to include an individual who is neither an Australian citizen nor a permanent Australian resident. Representatives of a foreign government or other foreign entity might therefore not merely *represent* a foreign principal, but indeed be foreign principals themselves; and private citizens of a foreign nation would likewise fall within the definition of a 'foreign principal'.

A registrable activity under the scheme includes communications conducted 'on behalf' of a foreign principal. Proposed section 11 of the Bill states that 'on behalf of' includes an 'activity' in collaboration with such a principal. *Collaboration* is not more closely defined, which could mean that even loose understandings between the AIIA and foreign individuals or institutions will be deemed to involve the AIIA in taking action on their behalf. For reasons which are enlarged upon below, this could have significant consequences both for the development by the AIIA of otherwise appropriate arrangements, and for its freedom to engage in intellectual pursuits or to foster an interest in international affairs.

It is true that, if it is to be registrable under the scheme, an 'activity' must be conducted for the purposes of political or governmental influence. It is also true that there are exemptions for diplomatic, religious and commercial activities. But that does not necessarily take beyond the scope of the proposed legislation a contribution by a foreigner to a debate conducted through the auspices of the AIIA which, with the collaboration of the contributor, was used by the AIIA in support of a submission to government.

Discussions between Australian institutions and governments can be important, indeed necessary, for the conduct of the educational and research activities in which the AIIA engages. The ability of the AIIA to continue that engagement may be restricted should the foreign influence transparency scheme be implemented with the broad coverage that a reasonable reading of the Bill may allow. In short, the AIIA is concerned that research, constructive advocacy and public debate may be discouraged, to the point of being abandoned, if the proposed measures are adopted. Their wide scope, together with significant penalties for non-compliance, may lead to an unjustifiable limitation on free speech quite beyond the intended reach of the Bill. It is, after all, a fundamental principle of the rule of law that provisions the breach of which gives rise to criminal liability should not be so broadly drafted that they inadvertently capture a wide range of benign conduct.

The AIIA therefore submits that the Government not proceed with the Bill until it has undertaken a thorough consultation process with stakeholders, and that the Parliament provides a specific exemption for activities that are predominantly academic or scholastic in nature. The AIIA also submits that proposed section 11 be amended to remove references to 'collaboration'.

Yours Sincerely

Allan Gyngell

A handwritten signature in black ink that reads "Allan Gyngell".

National President

Australian Institute of International Affairs