



GLOBAL HEALTH ALLIANCE MELBOURNE

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
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Parliament House
Canberra ACT 2600
By email: pjcis@aph.gov.au

Dear Committee Secretary

INQUIRY INTO THE PROVISIONS OF THE FOREIGN INTERFERENCE TRANSPARENCY SCHEME BILL (THE 'BILL')

The Global Health Alliance Melbourne thanks you for the opportunity to make this submission and for the extension of time permitted to us.

In this submission we refer to:

- the *Foreign Interference Transparency Scheme Bill 2017* as amended by the draft changes issued on 8 June 2018 as **FITS**; and
- the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* (as it is proposed to be amended according to the Committee report of 7 June 2018) as **EFI**.

We discuss both these Bills because we are told that they are interconnected and need to be considered together.

1. Background

The Global Health Alliance Melbourne (GLHAM) is comprised of 32 Australian-based organisations that provide global health services. We attach a list of our members at the end of this submission. As you will see, our members include corporations, medical research institutes, universities and international NGOs.

Most of our member organisations receive funding from foreign sources, including foreign governments and foreign-based philanthropists.

Our role is to identify and support non-traditional partnerships to improve outcomes for member organisations and their clients, including programmatic partnerships, new funding or business opportunities; to achieve global health equity outcomes.

GLHAM brings together a diverse mix of individual organisations across the academic, public and private sectors to increase health impact and outcomes, and strengthen the capability of the global health and development sector specifically in Melbourne, indigenous Australia and the Asia-Pacific Region.

We recognise the enormous support that the Federal Government has provided to the medical research sector in Australia, implementing many significant initiatives such as the Medical Research Future Fund and supporting the development of medical research and public health programs to improve the health of all Australians.

We also understand the concerns the Government holds in relation to the possibility of some types of international donations undermining the Australian political landscape.

However, having said that, we wish to draw to the attention of the Committee what we believe to be the significant unintended consequences of the proposed Bills on the health promotion, international development and medical research activities of our member organisations.

These unintended effects result in part from the incompatibility of the self-registration regime of FITS with the requirements of many international charitable organisations which provide funding to our members (without directing our members' activities).

Given that, to the best of our understanding, the international organisations share the same aims, in implementing these requirements, as does the Australian government in proposing the Bills in question, we submit that it is appropriate to amend the proposed legislation in order that those shared aims can be achieved for the benefit of all parties.

We emphasise that Australian measures to address foreign influence should not undermine the key role of charities and other non-government organisations in supporting our democracy nor should they constrain public interest advocacy by charities and not-for-profit groups.

It is of great concern to our members that their normal health research and related activities are potentially subject to criminal penalties under both Bills simply because of association with foreign international organisations, health institutions or charities.

The proposed Bills have been drafted far too widely and without enough consultation, nor enough consideration of the Bills impact on civil society.

2. Concerns

Under the proposed FITS Bill, we believe that many of the entities our members work with and receive funding from (foreign governments at the local, sub-national and national levels) could be defined as 'foreign principals.'

We do not believe that any of our members has a direct principal and agency relationship with those funding bodies, and therefore we do not believe that any of our members is required to self-register under

FITS, as amended. However, because of the vague terminology used in FITS and the lack of clear definitions, the scope of the legislation remains unclear and continues to be a matter of considerable concern to our members, particularly in the light of the criminal penalties imposed for non-registration. While our members are not individuals who could be imprisoned, they do not wish to incur criminal liability for ordinary activities.

We stress that these concerns should be addressed through clearer legislative drafting and not through explanatory documents or guidelines.

Our understanding is that all of the following four elements need to be in place for the FITS Bill to apply. However, as mentioned below, there is considerable uncertainty in relation to many aspects of these crucial elements.

1. The person is carrying out any one (or more) of: communications activity, government lobbying, political lobbying or disbursement activity (all defined widely in the Bill, and note that government lobbying now includes lobbying a political campaigner as registered under the Electoral Act - which will not be a government body, but could be a charity, think tank, etc; and
2. The person is doing this for the primary or substantial purpose of influencing a political or governmental process (see section 12) or a process in relation to a political campaigner; and
3. They are doing this 'on behalf of' (as widely defined - section 11) some other party; and
4. That other party is a 'foreign principal' (as defined – section 10).

2.1 Clarifications required

- (a) We support the submissions of other civil society and human rights organisations, that section 11 of the FITS Bill should be further amended by deleting subclause 11(3) and removing remaining references in subclause 11 (1) to relationships that do not amount to a direct principal/agency relationship (such as 'arrangements').
- (b) We also support the submissions to the effect that the distinction between influencing a political or government process and a political or government decision still needs to be clarified. The confusion as to how these things can be separated will result in a marked chilling of free political communication about matters of concern to our members, being Australian and global health initiatives.

We note in this context that the Bill fails to recognise the essential and crucial difference between business organisations that work in their own interests and organisations like those of our members that work in the public interest. Our members' contacts with governments and with foreign parties is not self-interested but is for the benefit of Australians and the populations in developing countries, generally. Such contacts should not be captured under 'political or governmental influence' in section 12 and a specific exemption may be necessary to make this clear.

2.2 Inconsistency with terms of funding

Should any of our members – in complying with the FITS legislation – must register as a ‘foreign agent’ – they would then be precluded from receiving grants from organisations such as the Bill and Melinda Gates Foundation. That Foundation expressly forbids ‘political activity’. While we do not believe that our members carry out political activity in relation to Alliance matters, registration as a ‘foreign agent’ would give the Foundation a contrary message.

Similar concerns in relation to other international bodies are described in the attached document entitled: *“In whose interest? Silencing charities in Australia”* (Attachment A), which includes case studies from some of our member organisations.

3. Further Key issues with the proposed Bills

3.1 Under FITS and EFI, both the definitions of ‘foreign principal’ and ‘foreign political organisation’ are too broad and/or unclear:

- a. FITS and EFI have different definitions of “foreign principals” as follows:
 - i. FITS: foreign governments, foreign government-related entities and individuals, and “foreign political organisations” – but not foreign businesses unless they are associated with a foreign government;
 - ii. EFI: foreign governments, foreign public enterprises, international organisations, and “foreign political organisations” – but not foreign businesses unless they are associated with a foreign government;
- b. “Foreign political organisations” under FITS is currently defined to “include a foreign political party”. This broad definition could include international advocacy organisations that are not aligned with a foreign government or political party.

3.2 The fact that the EFI definition of ‘foreign principal’ captures international organisations such as UN and WHO bodies, is extremely undesirable and problematic, given the extensive communications between most of our members with such bodies in relation to our members’ normal activities. There appears to be no policy reason why such bodies should be regarded as ‘foreign principals’ under EFI. The argument that otherwise there is a ‘gap’ in the legislation through which espionage may be carried out is a faulty argument given the complete exemption of foreign businesses from the definitions of ‘foreign principal’ under both Bills. It is through that gateway in the Bills that any espionage would be channelled.

3.3 We are also concerned that inconsistencies in definitions suggest clauses will capture, or appear to capture, the activities and work of many charities and non-for-profit organisations like the Bill and Melinda Gates Foundation as ‘foreign’ parties that our members should associate with at their peril.

3.4 We recommend that government should establish a consistent and clear definition of “foreign political organisation” across both Bills that ***excludes international charities and advocacy groups***, which will protect and ensure:

- a) that charities and not-for-profit groups are not subjected to a greater compliance burden than they currently are;
- b) the ability of charities and not-for-profits to use funding (including international funding) for issues-based advocacy such as health promotion, which should not be constrained or restricted; and

- c) the freedom of charities and not-for-profits to cooperate on issues-based advocacy to advance issues of public interest, including working with non-Australian citizens and non-permanent Australian residents.

3.5 Penalties and implications for charities and not-for-profit organisations include: the burden of registration; criminal sanctions for non-compliance; unintended consequences of registering as an agent of a foreign government or other foreign principal even when it is not acting at the foreign principal's direction (unless the amendments we have called for are included in the FITS legislation).

3.6 Exemption from registration requirements only apply for commercial or business pursuits, and professional industry networks, but not for charitable and public interest work. Charities and not-for-profit groups should not be subject to extensive regulatory controls, administrative requirements or criminal offences which do not apply to other third parties such as industry associations and businesses.

We suggest that an exemption along the lines of the new section 29A should be added in relation to academic, research, charitable and public interest organisations, networks and associations like our own.

4. Curtailing the activity of Australian Universities

Three of our members are Australian Universities: Deakin University, University of Melbourne and Monash University. In addition to the recommendations described above, we support the recommendations made by Universities Australia:

Recommendation 1:

Universities Australia recommends that the Government not proceed with the Bill until it has undertaken a thorough consultation process with stakeholders, particularly the higher education sector.

Recommendation 2:

Universities Australia strongly recommends that the Parliament provides a specific exemption for activities that are predominantly academic or scholastic in nature. At a minimum, such a definition should include teaching and research activities, including the communication of research findings by any means.

Recommendation 3:

Universities Australia recommends that proposed section 11 be amended to remove references to 'collaboration'.

Recommendation 4:

Universities Australia recommends that expanded exemptions for legitimate business dealings and development be included in the Bill. This should include the normal conduct of business dealings of both commercial enterprises and the already heavily regulated, legitimate core business of non-profit organisations such as universities.

Recommendation 5:

Universities Australia recommends that legitimate advocacy on behalf of international students and other vulnerable groups (such as temporary workers) be exempted from this scheme.

We would be happy to discuss these issues with you further.

Yours faithfully,



Misha Coleman
Executive Director
Global Health Alliance Melbourne

Member Organisations

 Denotes Gold Sponsors

