GetUp submission to the Parliamentary Joint Committee on Intelligence and Security regarding the Attorney General's proposed amendments to the Foreign Influence Transparency Scheme Bill 2017

This submission is in response to the Attorney General's amendments to the *Foreign Influence Transparency Scheme Bill 2017* (**Transparency Scheme Bill**), which were made public on 8 June 2018.

GetUp has three persisting concerns with the Transparency Scheme Bill:

1. it is very unclear what activities would be registrable under this Bill that will not be criminalised under the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* (**Espionage Bill**);
2. it creates a double standard by exempting business and peak industry bodies from the obligation to register, but not advocacy organisations; and
3. it is still untenably broad insofar as it:
    (i) does not adequately define "foreign political organisations", which could include international advocacy and research groups that work independently of any foreign government; and
    (ii) still requires Australians to register as "agents" of foreign "principals" where no such relationship exists as per the common understanding of the words.

1. Activities will already be criminal under the Espionage Bill

The Espionage Bill has been described by one of Australia's most eminent Constitutional law scholars as "dangerous", because the espionage offences undermine our freedom of speech and could see journalists imprisoned for 25 years or more just for doing their jobs.[1]

Another aspect of the Espionage Bill, is the draconian "foreign interference" provisions.[2] To summarise, those provisions make it a criminal offence to (among other things) engage in conduct on behalf of or in collaboration with a foreign principal, where that conduct is either intended to or reckless as to whether it influences a political or governmental process, influences the exercise of an Australian democratic or political right or duty, or prejudice Australia's national security.

Thus the Espionage Bill already criminalises precisely the same type of communications and parliamentary lobbying activity that is merely registrable under the Transparency Scheme Bill.[3] GetUp can only assume that this absurd outcome is a result of the foreign interference provisions having been poorly and mistakenly drafted.

2. Applies to charities and not-for-profits, but not business

This scheme imposes a double standard within our democracy, whereby civil society and community groups will be exposed to red tape and criminal penalties but business lobbyists, including by those that are majority foreign owned, will fly under the radar.

There is no sound policy basis for discriminating between businesses and "industry representative bodies" (for example, the Minerals Council of Australia) and not-for-profits. Therefore, just as broad exemptions have been carved out for business, GetUp asks that exemptions be provided at the very least for charities, but properly and fairly, for public interest advocacy groups across the board. If not, both groups should be regulated the same.

3. Application is still too broad

GetUp's last submission regarding the Transparency Scheme Bill contended that it was "worded broadly so as to capture even the most innocuous of conversations with non-Australians". Four defined terms in particular made this Bill unworkable and deeply problematic: "foreign principal"; "on behalf of"; "lobby"; and "communications activity".

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[1] George Williams, "National security isn't served by bipartisanship", *The Australian*, 11 June 2018.
[2] See generally proposed Division 92, specifically proposed ss. 92.2, 92.3.
[3] Contrary to Minister Hastie's claims during public hearings before the PJCIS on 16 March 2018, the Espionage Bill offences to not necessarily require "covert" conduct, and the two Bills are not "aimed at different problems" (see p 38).

The Attorney General's amendments include a significantly narrowed new definition of "foreign principal". However, as in the Espionage Bill, the term "foreign political organisation" has not been adequately defined in the Bill. The current non-exhaustive definition could include independent international advocacy groups and think tanks that operate independently from all foreign governments, which is inappropriate. Consistent with the PJCIS' recommendation in its Report on the Espionage Bill, we believe this term should be defined exhaustively to include only organisations that field candidates in parliamentary elections.

The phrase "on behalf of" has been narrowed also, but the most problematic limb remains intact. Proposed subs. 11(3) introduces an inappropriate standard for being deemed an "agent" to a "foreign principal", whereby the "principal" need only know that the agent would undertake the activity - *or expect that the agent might undertake the activity*. This is clearly not a principal/agent relationship in the usual meaning of those terms, and it is misleading to require anyone to register as such. Similarly, merely forming an arrangement under proposed s. 11(1)(a), understood elsewhere as a "meeting of the minds", is not sufficient. To the public, the term agency connotes direction and control, and this should be the standard reflected in the legislation.

Recommendations

GetUp recommends the following:

(a) streamline the Espionage Bill and the Transparency Scheme Bill by dramatically narrowing the offence provisions regarding "foreign interference" under the Espionage Bill. Currently, conduct that is registrable under the Transparency Scheme Bill is criminalised by the Espionage Bill. Further, the "foreign interference" offences in the Espionage Bill threaten Australians' civil liberties and reporting in the public interest;
(b) remove the discrimination against advocacy groups, either by removing exemptions for business and peak industry groups from the obligation to register, or by providing commensurate exemptions for not-for-profit advocacy groups;
(c) define "foreign political organisations" to only include foreign political parties and similar groups that have a close connection to a specific foreign government;
(d) remove proposed subsections 11(1)(a) and 11(3); and
(e) remove strict liability and severe civil penalties for failure to register under proposed s. 58.