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

via email: pjcis@aph.gov.au

15 June 2018

Dear Secretary and Committee Members,

Review of the Foreign Influence Transparency Scheme Bill 2017

We welcome the opportunity afforded by the Committee to comment on amendments proposed by the Attorney General to the *Foreign Influence Transparency Scheme Bill 2017.*

Much of the commentary in relation this Bill relates to concerns about the scope of the persons and activities that it captures. Whilst we share many of the concerns expressed about these matters, there are some particular matters related to our activities and the activities of our affiliates which we firmly believe should not be captured by a Bill devised to identify and regulate the influence of foreign powers. Regrettably, the amendments that have been proposed do not remove these activities from the scope of the Bill. For that reason, we are of the view that further amendments are required.

Firstly, the Bill - in both its current form and in the form it would take were the proposed amendments incorporated - captures activities that we or our affiliates may choose to engage in to advocate for the interests of foreign workers resident in Australia pursuant to a temporary visa. This issue arises in the current form of the Bill in the following ways:

- Paragraph (e) of the definition of a “foreign principal” includes an individual who is neither an Australian citizen nor a permanent Australian resident;
- Paragraph (1)(f) of the definition of “undertaking an activity on behalf of a foreign principal” includes activities undertaken in “collaboration” with such persons;
- Paragraph 1(c) of the definition of “undertaking an activity on behalf of a foreign principal” includes activities undertaken at the request of such persons;
- Paragraph 1(c) of the definition of “undertaking an activity on behalf of a foreign principal” includes activities undertaken at the direction of such persons (a vote of union members may be taken to be such a direction); and
- There is no specific exemption for trade union related activities.

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The activities we and our affiliates undertake in advocating for the interests of these workers may involve activities that would be captured in items 1-3 of the table at clause 21 of the Bill: Parliamentary lobbying, general political lobbying and communications activity (including on social media). These activities would likely be directed at influencing the position of politicians, political parties, electoral policy platforms and votes on legislation and thus fall within the definition of "activity for the purpose of political or governmental influence" in clause 12. We recently engaged in such activities in relation to the public and Parliamentary debate that culminated in the passage of the *Fair Work (Protecting Vulnerable Workers) Act 2017*. There can be no doubt that such activities are legitimate activities of trade union organisations and are far removed from the pernicious or opaque activities that a scheme of the nature proposed in the Bill ought to capture.

Were the proposed amendments adopted, such activities would remain within scope. This is because:

- Paragraph (a) of the definition of "foreign government related individual" includes an individual who is neither an Australian citizen nor a permanent Australian resident;
- Paragraph (b) of the definition of "foreign government related individual" appears to be satisfied merely by a person being subject to the law and administrative authority of their home country;
- A "foreign government related person" is a class of foreign principal that is captured by items 1-3 of the table at clause 21;
- The activities accordingly remain captured by items 1-3 of the table at clause 21 of the Bill; and
- There is no specific exemption for trade union related activities.

Secondly, we are concerned that the Bill, either in its current or amended form, captures activities we and our affiliates undertake in cooperation with overseas trade unions, union confederations and international trade union federations. Trade unionism has historically involved cooperation among workers' organisations across national borders based on commonality of interest, a desire to learn and develop new strategies and the establishment of fair and safe standards for the carrying out of work that is inherently international (for example, the work of the International Transport Workers' Federation) or involves supply chains controlled by multinational corporations (for example, the work of IndustriALL Global Union). Such work has been an important part of the effort to secure fair and sustainable social and economic development in response to globalisation.

In addition, the International Trade Union Confederation, the Trade Union Advisory Committee of the OECD and the ILO Bureau for Workers Activities (ACTRAV) all involve unions working globally to formulate policy positions that are promoted publicly on the international stage and lobbied for at the national level in Parliaments and within party political policy platforms and at the international level (for example, through the ILO). An example would be the positions that unions advance on appropriate labour standards in all free trade agreements.

Further, Australian unions support and collaborate with foreign unions, through federations or directly, on significant issues impacting workers' rights particularly in our region. Examples include the lobbying of Australian politicians that took place when Australian unions brought overseas

unionists to meet with them to encourage Australia to support better regulation of asbestos in their home countries, or the recent delegation of Korean unionists to lobby federal politicians to engage with the Korean government to improve safety standards in Korea's electrical power industry following a high number of worker fatalities. Occasionally some work we perform in collaboration with overseas unions is partly funded (for example ILO projects) or in kind payments are provided (for example travel and accommodation to attend ITUC regional meetings). Again, this is the type of work that Australian governments of all persuasions ought to expect and encourage Australian unions to undertake.

The Bill in its present form captures such work in the following ways:

- Paragraph (c) of the definition of "foreign principal" includes a "foreign political organisation", which is not clearly defined and may capture foreign unions (or at least those that might have affiliations to political parties in their home countries) or international union organisations;
- Paragraph (d) of the definition of "foreign principal" includes a "foreign business", which is given a definition that essentially captures any entity that is based overseas that is neither an individual, a foreign government, a foreign public enterprise or a foreign political organisation (thus it may capture foreign unions or foreign union organisations to the extent they are not already captured by the definition of "foreign political organisation");
- Paragraph (1)(a) of the definition of "undertaking an activity on behalf of a foreign principal" includes activities undertaken in "under an arrangement" with such persons, which would appear to be satisfied where unions were acting in concert to advocate for a particular position (for example, to lobby governments participating in the 2022 World Cup to insist on better worker protections for workers building the event facilities in Qatar);
- Paragraph (1)(c) of the definition of "undertaking an activity on behalf of a foreign principal" includes activities undertaken with "at the request" of a "foreign principal";
- Paragraph (1)(e) of the definition of "undertaking an activity on behalf of a foreign principal" includes activities undertaken with "funding or supervision" of a "foreign principal";
- Paragraph (1)(f) of the definition of "undertaking an activity on behalf of a foreign principal" includes activities undertaken "in collaboration with the foreign principal";
- The work we undertake is aimed at influencing the public, politicians and policymakers of the merits of advancing and protecting the interests of workers around the world and thus falls within the definition of being "for the purpose of political or governmental influence" in section 12;
- "Foreign political organisations" and "foreign businesses" are captured in each the activities at items 1-3 of the table at clause 21;
- "Foreign political organisations" are captured in the "donor activity" at item 4 of the table at clause 21 – each airline ticket to Canberra (for example to participate in a Parliamentary inquiry or meet with politicians) involves the "disbursement of money".
- There is no specific exemption for trade union related activities.

The Bill as proposed to be amended also captures such work, as follows:

- Paragraph (c) of the definition of "foreign principal" still includes a "foreign political organisation", which as above is not clearly defined and may capture foreign unions (or at least those that might have affiliations to political parties in their home countries) or international union organisations;
- Paragraph (b) of the definition of "foreign principal" includes a "foreign government related entity", which is given a definition that includes entities related to a "foreign political organisation", that have a constitution that require its officers to be members of that foreign political organisation. This may cover constituent parts of foreign unions or international union organisations;
- Paragraph (1)(a) of the definition of "undertaking an activity on behalf of a foreign principal" still includes activities undertaken in "under an arrangement" with such persons;
- Paragraph (1)(c) of the definition of "undertaking an activity on behalf of a foreign principal" continues to include activities undertaken with "at the request" of such persons;
- The work we undertake is aimed at influencing the public, politicians and policymakers of the merits of advancing and protecting the interests of workers around the world and thus continues to fall within the definition of being "for the purpose of political or governmental influence" in section 12, notwithstanding the provisos regarding "sole, primary or substantial purpose";
- "Foreign political organisations" and "foreign government related entities" are captured in each the activities at items 1-3 of the table at clause 21;
- "Foreign political organisations" and "foreign government related entities" are captured in the "disbursement activity" at item 4 of the table at clause 21 – the change in nomenclature from "donor activity" does not alter this.
- There is no specific exemption for trade union related activities.

It seems that the clearest pathway to resolving our concerns would be to insert an appropriately drafted exemption for trade union related activities in Division 4 of Part 2 of the Bill. We note that a similar course has been adopted in the proposed amendments at clause 29A in developing an exemption for "industry representative bodies". Further to the description of that proposed amendment at page 7 of the Attorney General's letter to the Chair, we submit that the regulatory burden that we and our affiliates would face under this Bill is similarly excessive and undesirable.

Whilst our primary concerns are those in relation to the scope of the Bill as above, we join with other interested parties in objecting to the criminal enforcement provisions. Noting that registration under the Bill would not carry with it any licence to engage in any otherwise restricted or proscribed activity, nor carry with it any privileges or immunities, we believe a registration scheme of this nature is more appropriately enforced wholly through civil penalty provisions with penalties set at level a appropriate for minor administrative breaches.

Finally, we note that buried in the detail of the Bill is some conflict with its ostensible purpose of achieving transparency. In particular, great latitude given to the Secretary of the Department (essentially as the administrator of the Register at clause 43) to choose to **not** make public certain information that is kept on the register. Further, the Minister is empowered to make Rules to further limit the information that is permitted to be publicly released (clause 71). This gives the Government of the day an unreasonable power to selectively conceal information about

the types of arrangements that it is apparently quite concerned about. Whilst there may be legitimate law enforcement or national security reasons for such concealment, it is more appropriate to confine non-publication to those specified reasons rather than leave the system open to the criticism that it may be misused for political purposes.

Yours faithfully,

Sally McManus
Secretary