

15 June 2018

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

Dear Secretary

### **REVIEW OF THE FOREIGN INFLUENCE TRANSPARENCY SCHEME BILL 2017**

Chemistry Australia welcomes the opportunity to make this short submission on the Foreign Influence Transparency Scheme Bill 2017, in light of the amendments proposed by the Government and released by the Parliamentary Joint Committee on Intelligence and Security on 8 June 2018. We welcome the Government's good faith effort to respond to and address the concerns that industry expressed about the initial Bill. However, even in its revised form the Scheme is likely to impose regulatory burden on professional industry bodies incorporated in Australia. Despite recent proposed amendments, it remains sufficiently ambiguous that it would be damagingly burdensome and a hindrance to the everyday work of industry organisations like Chemistry Australia on behalf of business. If the Scheme is to proceed, further revisions are needed to eliminate ambiguity and make the scheme operable.

Chemistry Australia (formerly the Plastics and Chemicals Industries Association) is the peak national body representing the \$40Bn business of chemistry in Australia. Chemistry Australia members include chemicals manufacturers, importers and distributors, logistics and supply chain partners, raw material suppliers, plastics fabricators, converters and compounders, research organisations and a number of leading Australian universities. The industry contributes \$11.5Bn in GDP and supplies inputs to 109 of Australia's 111 industries.

Chemistry Australia's Constitution, under its Objects and Powers, is required, amongst other aspects to:

- "promote the sustainable growth of the Industries and provide leadership, support and assistance to its members
- Represent the Members positively and fairly in dealings with all stakeholders, and
- Support the members in their efforts to ensure that the Industries are leaders in health, safety, security and environmental performance".

To help achieve these objectives, Chemistry Australia conduct a range of activities for members and on behalf of industry, including advocacy, product stewardship, Health Safety and Environment programs, innovation support and engagement with all sides of politics, all levels of government, wider stakeholders, the media and the community.

The original Bill would have impacted Chemistry Australia as many businesses in Australia have partial or complete foreign ownership, and because the definitions of 'registrable activities' including lobbying and communications were very wide. The consequences of registration would have been a significant

administrative burden, with Chemistry Australia having to inquire about, and update the government on, the ownership status and relevant changes thereto of member businesses. This would make it significantly harder for us to carry out our role as an industry representative.

The Government's proposed amendments seek to alleviate these concerns by:

- narrowing the focus to include companies with significant ownership by a foreign government, but not private foreign-owned companies; and
- introducing an exemption for industry representative bodies.

The latter exemption in relation to professional industry bodies incorporated in Australia, proposed Section 29A, reads:

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) the person is an entity formed in Australia, or incorporated under a law of the Commonwealth, a State or a Territory (an Australian entity); and
- (b) the person's purpose is to represent the interests of business or a particular sector of business or industry; and
- (c) the person has members who are also Australian entities; and
- (d) the activity is, or relates primarily to, representing the interests of business, or the particular sector, as a whole.

Chemistry Australia recognises that this exemption is well intended. However, clause (d) is extremely ambiguous in the context of the day-to-day activities of an industry representative body and provides a real likelihood of unintended consequences on all of its members and activities.

- Australian industry can be fragmented by its nature. There may be sectors or subsectors which are predominantly foreign owned, including potentially foreign government owned, particularly where there are only one or two businesses in the sector. Do representations on behalf of such a subsector satisfy clause (d) irrespective if they have significant membership breadth including Australian owned companies?
- Chemistry Australia frequently arranges forums and meetings for members with, makes submissions on behalf of members to, or forwards feedback from members to, relevant Departments and Ministers. While this is part of our function as a broadly representative industry body, individual issues raised or feedback provided may have the potential to relate to a narrow subset of members or a single member within the broader economy suffering from the same issues, as well as the broader membership. At what point does such activity fall outside clause (d)?
- And it would be rare for an issue or its remedy to solely relate to any single company. For example policy issues relating to energy market reform impacting manufacturers are universal and critical for the breadth of membership. Improving health and safety outcomes for workforces or supporting industry best practice environmental outcomes are similar areas impacting all types of businesses irrespective of ownership. In which case, how would an association divorce or quarantine the outcome for one company from the others which its Constitution requires them to collectively support?

Unless the issue is clarified Chemistry Australia and other industry representative bodies will have to grapple with the interpretation of these matters constantly, with the likely result that we cannot provide the support and representation that industry should be able to expect and association's Constitutions require. These would be unfortunate and unintended outcomes and consequences of legislation seeking to strengthen the Australian economy. They would not meet the intended objective of the proposed amendments for reasonable and proportionate regulatory burden.

There are at least two ways to clarify the issue.

The simplest and most preferable is to delete clause (d), thus extending the exemption to activity by any Australian entity that has the purpose of representing the interests of business or a particular sector and has members that are also Australian entities. This would enable industry bodies to know whether they satisfy the test by virtue of their foundational legal documents and their existing membership rolls, rather than requiring daily self-scrutiny of commonplace representational activities.

A lesser alternative would be to provide greater guidance in the Bill or the Explanatory Memorandum on the kinds of activities that are included and excluded by clause (d). This guidance should be developed in close consultation with industry. Given the Government expressed preference to pass the legislative package of which this Bill forms part before the imminent byelections, there would be little time for such consultation. We therefore strongly urge the deletion of clause (d).

Should you wish to discuss the matters raised in this letter, please contact me [REDACTED]  
[REDACTED]

**Peter Bury**  
**Director – Strategy, Innovation and Research**  
**Company Secretary**