

The Senate

---

Committee of Privileges

---

Foreign Influence Transparency - a scheme  
for Parliament (178<sup>th</sup> Report)

Documents for the inquiry

November 2019

© Commonwealth of Australia 2019

*This document was printed by the Senate Printing Unit, Parliament House, Canberra.*

## **Documents for inquiry**

- |    |   |    |
|----|---|----|
| 1. | Official Committee Hansard, Canberra, 2 April 2019                | 5  |
| 2. | Responses to Questions on Notice, received 29 May 2019            | 19 |
| 3. | Submission – Senator Patrick, dated 12 October 2019               | 33 |
| 4. | Supplementary submission – Senator Patrick, dated 25 October 2019 | 45 |





COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

STANDING COMMITTEE OF PRIVILEGES

TUESDAY, 2 APRIL 2019

CANBERRA

BY AUTHORITY OF THE SENATE

### **INTERNET**

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

To search the parliamentary database, go to:

**<http://parlinfo.aph.gov.au>**

**SENATE****STANDING COMMITTEE OF PRIVILEGES****Tuesday, 2 April 2019****Members in attendance:** Senators Abetz, Fierravanti-Wells, Kitching, McDonald, O'Neill, Dean Smith.

**WITNESSES**

**ATKINSON, Ms Lucinda, Assistant Secretary, Attorney-General's Department..... 1**  
**MEHRA, Mr Jagdish, Director, Development and Operations, Attorney-General's Department ..... 1**  
**WALTER, Mr Andrew, First Assistant Secretary, Attorney-General's Department ..... 1**



**ATKINSON, Ms Lucinda, Assistant Secretary, Attorney-General's Department**

**MEHRA, Mr Jagdish, Director, Development and Operations, Attorney-General's Department**

**WALTER, Mr Andrew, First Assistant Secretary, Attorney-General's Department**

**Committee met in camera at 13:07**

**CHAIR (Senator O'Neill):** I now declare this meeting open, and I welcome Mr Andrew Walter, Ms Lucinda Atkinson and Mr Jagdish Mehra of the Attorney-General's Department. Before this briefing gets underway, let me just mention a few things. A confidential transcript of the briefing will be produced. At this stage, the committee has no intention to publish it or present it to parliament. However, you do need to know that it is within the power of the committee to do so and that the Senate has the authority to order the production and publication of in camera evidence. If the committee should decide to publish the evidence in total or in part, we will seek your views. But, primarily, this is for our whole committee to be able to read a transcript of what transpires here today.

Committee proceedings and participants in them are protected by parliamentary privilege. Evidence given today is confidential. Any unauthorised publication may be dealt with as a contempt. It is also a contempt to give false or misleading evidence to any committee or to interfere with witnesses and the evidence they seek to give. I understand that you have been provided with the resolutions of the Senate with regard to witnesses.

Today's briefing relates to the committee's inquiry into establishment of a foreign influence transparency scheme for parliamentarians. This inquiry has arisen following the establishment of the executive Foreign Influence Transparency Scheme, which commenced on 10 December 2018. The purpose of the scheme is to provide transparency for the Australian government and the Australian public about the forms and sources of foreign influence in Australia. The officers here today are to provide information about how that scheme is operating. Does anyone wish to make an opening statement?

**Mr Walter:** Thank you, Chair. I thought I'd just make a couple of very, very brief comments, and then I'm happy to be in your hands in terms of questions you ask. As you've already mentioned, the scheme commenced on 10 December last year. There was a three-month grace period—that is, a three-month period in which people who were already in arrangements or acting on behalf of foreign entities didn't have to register. They had three months to do so. So the scheme, in a sense, kicked off completely on 10 March. As of this morning we have 26 registrations under the scheme, which you can access on the website. We've done a range of work around publicising the scheme: community outreach; advertising; and writing to a whole lot of organisations, including parliamentarians, about their obligations and inviting them to ask questions. We've got a whole lot of information on the website about how the scheme works, including fact sheets and those types of things. We take about four or five calls a day, through a hotline that we have, from people who are asking questions about the application of the scheme to them, and we try to deal with them as effectively as possible.

I said '26 registrations'. To put that in a little bit of context for you, the lobbyist register, which has been going for a lot longer than this, has about 230 registrations, so we're running around 10 per cent of that at this point. It's difficult to say what number we'll get to. My best guess, before we started, was around 50 after six to 12 months, so we'll see whether we get up to around that number. I think we'll probably get there, and Ms Atkinson will probably say higher, so we'll see how we go with that.

There have been a few challenges to the implementation of the scheme. I'm happy to talk through those. Obviously it's a web based register and registration process. We've gone through that process of setting it up. Of course, designing a register that works electronically that matches the act is a bit of a challenge, which is the same in any of these schemes that you try and run. We've gone through that process, and we continue to make some changes and enhancements to the register as we go along.

And there are some inherent complexities in the scheme in terms of matters that individuals have to determine. Ms Atkinson might add a few additional ones, but there are particular challenges around defining how you determine what a foreign entity is if you're going to register. There are some tests that you have to go through under the act. It's not an easy test to do in some circumstances, and application of some of the exemptions pose some particular challenges for people who may be under an obligation to register. So there are a few challenges in how the scheme works and how we're implementing it, but, overall, I think it's going okay. We've had to make a couple of amendments to the act, as you are aware. There's another bill currently before parliament that's really just tidying up things that haven't quite been working in the first couple of months of operation of the scheme. Do you want to say anything else at this point, Ms Atkinson?

**Ms Atkinson:** Probably not. I'm happy to take questions.

**CHAIR:** Can I just go to your comments, Mr Walter, about the challenges of implementation. You've just given us a potted view of some of those things. Can I go to one that is very concerning to me—the inherent definitional challenges. I think that's at the heart of my concerns about this whole process. So what's happening?

**Mr Walter:** I guess the challenge here is this: if you are acting on behalf of a foreign organisation—let's just call it a foreign organisation at this point; it could be a company, it could be an overseas organisation of some sort, an NGO—then you need to have a reasonable degree of information about that organisation, its relationship with a foreign government, to be confident about whether you have a registration obligation or not. In some instances that's going to be very clear and there are not going to be any problems; you'll just simply go off and do it. In other instances you're going to be heavily reliant on an understanding of foreign law, for example, as to whether that entity is actually a foreign related entity. If it is and you're acting on behalf of them—only doing those political activities, of course; you can be representing them in all sorts of other ways and you wouldn't have to register—that primary question can be a little tricky in relation to some countries where laws and relationships with governments are less transparent than they are here.

**CHAIR:** So what sort of support do you offer people who might not have the knowledge or the financial resources to seek quite complex advice about laws in a foreign country?

**Mr Walter:** There are a couple of things available. If we have information then we're happy to share that information; however, we can't make that legal determination for them. It's up to them to make a legal determination on whether they need to register, and they may need to get advice, including legal advice, on whether they have a registration obligation. If we have information that we can point to about where to get information about the share status of a company or things like that then of course we'll point to that, but that obligation rests on the individual: who am I acting on behalf of? We would encourage them to talk to the entity that they're acting on behalf of and get from them information that goes to the critical questions they have to answer. Particularly if it's a foreign company, they may need to know about share control, who sits on the board and those kinds of things required under the act. So that legal advice component is critical.

**CHAIR:** Do you rely on their legal advice or do you make an adjudication? On what basis would you judge?

**Ms Atkinson:** Under the act the secretary has certain powers, but one of the powers he doesn't have is to determine whether a person needs to register. Andrew said that the individual needs to determine for themselves whether the person they're operating on behalf of meets those definitions. We don't have the power to determine in relation to that individual whether they need to register, but the secretary does have a power to issue what is called a transparency notice. That notice is essentially a mechanism to declare an entity to be what's known as a foreign government related entity or individual under the scheme. In the circumstance where an individual is just not able to make that determination for themselves that mechanism allows the secretary to issue a notice that essentially declares that entity or that individual that they're operating on behalf of to be so closely related to a foreign government or a foreign political organisation that they meet the thresholds within the act.

**CHAIR:** Have you done that?

**Ms Atkinson:** No.

**CHAIR:** On what information would you do that? What sort of surveillance of the world do you have that enables you to do that?

**Mr Walter:** The first point is to say, in terms of administering the scheme, we still see that primary responsibility to make inquiries and do due diligence as sitting with somebody who is acting on behalf of a foreign entity, regardless of whether it's a foreign related entity for the purposes of the act. As with any other regulatory scheme, the primary responsibility is on the person who may be under regulation to do their due diligence. We start from the point of not wanting to be issuing these notices all the time. There may be circumstances where it's appropriate to do so because there is such a high degree of uncertainty and the circumstances warrant it, but it shouldn't be a kind of default position.

We would exercise that in those kinds of special circumstances. Yes, we would have to go off and do our own research. We would have to look at foreign law. We would have to look at what the set-up of a particular entity is and what their relationship is. All of that is challengeable, so it has to be information that we can rely on, in the public domain largely, to be able to defend that decision. The entity that we say is a foreign related entity can challenge that and say, 'No, we're not.' That can go to the AAT et cetera, so we need to make sure that we've got our research right before we do that.

**CHAIR:** You haven't activated this capacity yet, but is your decision-making informed by any intelligence agencies?

**Mr Walter:** Yes. We have a relationship with the intelligence agencies. I guess we're looking at where they can point us in the direction of entities that might fit the criteria of the act. But, again, in terms of reliance, we have to be very careful there, because there's a question mark about how we would protect any intelligence information that came to us and we relied on for the purpose of a decision. If we become aware of an entity, our first starting point is: what research can we do to establish, on the basis of publicly available information or easily accessible information, that this meets the criteria and therefore this entity is a foreign related entity, and anyone acting on behalf of it—

**CHAIR:** Crudely, they put up a flag, you do some work and then you just watch closely.

**Ms Atkinson:** Yes. Just to add to that, the secretary also has powers to compel people to provide information and documents that might be relevant to his consideration about issuing a transparency notice.

**CHAIR:** So the transparency notice can be preceded by this level of request?

**Ms Atkinson:** That's right.

**CHAIR:** Have you undertaken any of those requests?

**Mr Walter:** Not yet.

**Ms Atkinson:** No, not yet.

**Mr Walter:** Partly that's been because, to a certain extent, it's not that we've done a softly-softly approach—we've done lots of publicity about this, but the scheme is still relatively new, really. New arrangements have only had to be registered since 10 March, which is less than a month, so we've been doing lots of publicity, lots of working with the community. As we get a bit further along, it'll be more obvious where some entities aren't registering, and we'll probably need to start thinking about our powers.

**CHAIR:** I have many more questions, but I'll just ask one more and then move around. Political activities—the definitional nature—

**Senator IAN MACDONALD:** Parliamentary, you mean, rather than political?

**CHAIR:** No, because the secretary used the words 'political activities' in the evidence that we received. Are there any definitional challenges around that that are confounding the complexities you've already described for us?

**Ms Atkinson:** As you'd probably be aware, the scheme covers four types of activities: parliamentary lobbying, which is lobbying a member of parliament; general political lobbying, which has a slightly wider nexus and covers lobbying anybody in the Public Service or a political party or a member of a parliamentarian's staff; communications activity, which is communicating with the public or a section of the public; and then disbursement activity, which is providing goods or things of value. I think probably, Senator, you're getting at the fact that each of those activities has to be done for the purpose of political or governmental influence, which is defined in the act as, essentially, any attempt to influence or affect the process or decisions of any of those entities that are mentioned or the public in relation to an election. I think there is some challenge in terms of interpreting what falls within that scope, which is pretty broad, because anything could be construed as being inherently political, but it does need to have that character of trying to influence decision-makers and those involved in supporting decision-makers in their activities.

**CHAIR:** You don't just support decision-makers because they elect us in. It goes right down to that level if you really—

**Senator KITCHING:** I wonder if there's crossover with the Electoral Act in some of the definitional—

**Ms Atkinson:** The definitions don't align perfectly, but in terms of lobbying a political party, for example, there's probably some overlap there, yes.

**Mr Walter:** The other thing that's probably worth just mentioning as well is that there are special obligations in relation to former cabinet ministers. Their obligations are really if they're doing anything on behalf of foreign entities. You take out this idea of 'for a political purpose' altogether. It's actually simply doing anything. If they're a member of a board—

**Senator KITCHING:** Is there a retrospective—

**Senator IAN MACDONALD:** Can I go next? I'm deputy chair and I have to leave at 1.30.

**Senator KITCHING:** Yes.

**Senator IAN MACDONALD:** Thank you very much for what I've heard from you. If you've answered these questions before, please tell me. I have a lot of questions, but, just for my understanding, can I put three scenarios to you. I'm a serving politician, some foreign government has given me a gift of some value and I then start

lobbying the government about an issue that's very important to that country—that's scenario 1. The second scenario is: I am leading a parliamentary delegation to another country; I make some submissions to another country but pick up something; I come back home and go to people in my constituency and say, 'You should be trading with this country; you should be doing this.' That's the other scenario. The third one is: I get up in the Senate and move a motion that calls on the government to recognise West Papuans' claim for self-determination after being lobbied by some Free Papua people. In those three scenarios, what do I have to do? Have I breached any law?

**Ms Atkinson:** Under the executive scheme?

**Senator IAN MACDONALD:** Yes.

**Ms Atkinson:** No. Sitting parliamentarians are entirely exempt from the executive scheme, so there are no obligations on any serving member of parliament. The people who you've engaged with may have registration obligations. For example, in the last scenario, the West Papuan group that has lobbied you—that is parliamentary lobbying and they should be registering that engagement.

**CHAIR:** As lobbyists?

**Ms Atkinson:** Yes, as lobbyists.

**Senator IAN MACDONALD:** Even though I've just met them in the electorate and they've called in and said, 'You live down the road from me, but I want you to raise this'?

**Ms Atkinson:** The factors that we would go through in any scenario are these. We would look at whether or not they're doing a registrable activity. In that case, engaging with you to persuade you in one way or another is parliamentary lobbying. The key next steps would be to look at whether or not that's being done on behalf of a foreign principal. In that case, you'd be looking at whether or not the local people have links back to a West Papuan political organisation and whether their activities are in some way being directed, suggested or requested from that political organisation. That would give you the nexus between those local people and the foreign principal. Then you'd look at whether or not any exemptions might apply, and there are a range of exemptions under the act. A couple that spring to mind are, for example, that they might be a charity or undertaking humanitarian aid.

**Senator IAN MACDONALD:** What about my first scenario—I'm a member of parliament, someone gives me an expensive gift and I subsequently make a submission to the Australian government about an issue that's very important in the country of the donor of the gift?

**Ms Atkinson:** Again, we'd go through the same steps. Are they doing a registrable activity? It's either parliamentary lobbying or disbursement activity in that case. Are they doing it on behalf of a foreign principal? So is there some nexus between that individual and the foreign country?

**Senator IAN MACDONALD:** So the person that gave me the gift and asked me to make—

**Mr Walter:** You have no obligation under this act. You might have other obligations in relation to the parliament, but under this act you don't have to do anything. The question is about the gift giver—we would have to go through those steps for them.

**CHAIR:** So senators' interests should cover that issue that you're talking about, but this is supposed to cover off the person who is one step removed.

**Ms Atkinson:** If that person, for example, was an employee of the foreign government and it was very clear to you that they were an employee of the foreign government, there would be no need for them to register because foreign government employees are also exempt under the scheme. But if they're a private individual and they are acting at the direction or request of a foreign government, then they would need to register that.

**Senator IAN MACDONALD:** Thank you.

**Senator KITCHING:** Going back to former cabinet ministers, what's the retrospectivity element in that?

**Ms Atkinson:** For former cabinet ministers, the obligation is for their entire lifetime. So if you've been a cabinet minister and you're still alive, then you're under those obligations. There is also a separate category for recent designated position holders, which includes former ministerial staffers who were senior advisers or chief of staff and above, or heads of agency and deputy heads of agency in the public sector.

**Mr Walter:** Non-cabinet ministers, former ambassadors, high commissioners—

**Ms Atkinson:** And former parliamentarians.

**Senator KITCHING:** I'm thinking, really, under the corporations law here. You might have certain objects in your constitution that form the entity, and there's a variety of things in there—maybe you do humanitarian aid but

maybe you're also doing something more commercial. Where's the balance? Does one only need one of those objects—or even activity; not just objects, because I can imagine there would be some entities that might have lovely objects and whose activities perhaps don't match with the objects in their constitution. They might say, 'We don't have to register, because we do humanitarian aid and a variety of other things,' but in fact their activities really suggest something else. Where's the balance where they have to declare or register and the penalty provisions are then enacted?

**Ms Atkinson:** In most cases it will be a case-by-case analysis. It will depend on the activity that they're undertaking at that time rather than their general constitution. Even if they have as part of their constitution or their mission statement that they undertake humanitarian aid work, you would look at the specific activity and whether that was in fact being done for a humanitarian purpose. I should say too that, almost without exception, the exemptions are crafted in a way that they're quite specific in requiring that the link between the entity doing the activity and the foreign principal is apparent to everybody in the circumstances. For example, for a charity covered by the charities exemption because they are undertaking something that's consistent with their charitable purpose, it must nevertheless be transparent to everybody in the circumstance that they're doing it on behalf of a foreign principal.

**Senator KITCHING:** Can I look at it from a slightly different angle. It occurred to me that, with the CFO of Huawei—she's on remand—they had spent many years saying they were entirely separate from the CCP, yet Beijing's reaction would indicate that in fact they're not. So what do you do about an entity that says they're separate—and in fact is listed on the New York Stock Exchange—but isn't actually separate? I can think of many jurisdictions around the world. I can think of airlines owned by a state, for example. What do you do about those situations?

**Mr Walter:** It might be helpful if I ran through the definition of 'foreign government related entities' in relation to companies, because I think that's an area of concern.

**Senator KITCHING:** Okay.

**Mr Walter:** I'll truncate it a little bit. There are a few tests that we have to consider or somebody who might have to register needs to consider in relation to whether a company is a foreign related entity. One is that the foreign principal like the foreign government or the foreign political party holds more than 15 per cent of the issued share capital. Another is that it has more than 15 per cent of the voting power in the company. The foreign principal could be in a position to appoint at least 20 per cent of the company's board. Then these are the two that become more things where you would have to do a real factual inquiry into the circumstances to look more closely into it. The directors of the company could be accustomed or under an obligation to act in accordance with the directions, instructions or wishes of the foreign principal. The final one is that the foreign principal is in a position to exercise in any other way total or substantial control over the company. So you've got those ones at the top which are kind of factual inquiries where you can look and see what the share capital is, who's on the board and how they are related. They are not necessarily easy to determine, but there's somewhere to go with it. But then there is a broader question in relation to the type of companies you're talking about: whether we think that, overall, they're really acting under instruction from another government or entity. We actually need to think through that bit very carefully.

**Senator KITCHING:** Would you then write to that entity to say, 'We're aware that you're doing X'? I can think of instances where people might have displays here or invite parliamentarians to drinks and other things.

**Mr Walter:** We have written letters to certain individuals and entities in Australia suggesting that they might want to consider whether they have an obligation to register, where we have a view that they probably have to. That's been the first step rather than going in and saying, 'Hey, we're going to exercise powers in relation to this thing,' and that kind of thing. We're starting with—

**Senator KITCHING:** Honey rather than vinegar.

**Mr Walter:** Yes!

**CHAIR:** How many of the 26 registrations were achieved through that process?

**Mr Walter:** That's a good question. I don't know. Can we take that on notice?

**CHAIR:** Thank you.

**Senator ABETZ:** This is a good segue to one lot of questions that I had. There are 26 registrants. You proactively approach some that you think might require registration. I know this is a crystal ball question, but how many are you anticipating, from current contact, will get on board? I assume you might be in discussion with

some as a result of your proactive contact with them or their proactive contact with you in trying to determine whether or not they need to register. How many are in abeyance, if you like, or under consideration?

**Mr Walter:** There are a couple of elements here that are probably worth mentioning, and then I'll ask Ms Atkinson if she's got more specific comments. One, of course, is a dynamic scheme. Obviously there are lots of lobbyists—

**Senator ABETZ:** Just from a time point of view: I don't want to hold you to an exact figure. Are we talking half a dozen or two dozen? That's all I want to know.

**Mr Walter:** It's not a huge number.

**Ms Atkinson:** We're probably looking in more detail at, say, a dozen.

**Senator ABETZ:** Right. That's all I need to know. I won't hold you to it.

**Ms Atkinson:** That is going to be a constant—

**Senator ABETZ:** The registrations will ultimately speak for themselves. I was just wanting to get a handle on that.

**Mr Walter:** We do expect them to go up over time.

**Senator ABETZ:** Of course.

**CHAIR:** In your introductory comments you said your guestimate was 50, expected after six to 12 months, but that Lucinda might have a different view. Why is that?

**Senator ABETZ:** Are you more at the coalface?

**Ms Atkinson:** Possibly! I think that the initial estimates were based on the scheme as it was introduced to parliament. They were around the same figures we have on the lobbyist register at the moment. That's because the scheme, when it was introduced to parliament, had a broader application. It applied to lobbying undertaken on behalf of any foreign entity, not just those related to foreign governments or political organisations; so it had a wider remit. The scheme was narrowed considerably during the parliamentary process. As a result it's quite different to anything else that's in existence anywhere, which makes it difficult for us to come to any kind of accurate estimation.

**Senator ABETZ:** Fully understood. I just wanted to get a quick assessment.

**Mr Walter:** Another point is to note that some of our registrants are acting on behalf of a range of foreign principals. It's not just one for one.

**Senator ABETZ:** In amongst those, do you think that some have registered out of an overabundance of caution?

**Ms Atkinson:** No.

**Senator ABETZ:** No? All right, that's fine. Does the FITS apply to serving parliamentarians?

**Ms Atkinson:** No.

**Senator ABETZ:** The answer to that is no, which I was expecting you to say! Whilst it's a policy decision for government to ultimately make, do you have a list of arguments for and against such a scheme applying to parliamentarians? I'm very conscious of the fact that we should not be asking you for policy as such, but is there or has there been an assessment done by people who have written down the arguments for and against a scheme, so that we can consider that?

**Mr Walter:** We haven't gone through that exercise, as far as I'm aware. We could go back and see—

**Senator ABETZ:** No, no.

**Mr Walter:** if it was done prior to Ms Atkinson's and my time with the scheme, and we could give some thought to—

**Senator ABETZ:** Originally the bill did encompass parliamentarians, if I'm correct—

**Mr Walter:** Then the decision was made to take it out.

**Senator ABETZ:** and then it was excised out. I am just wondering what the policy decision arguments may or may not have been for including parliamentarians and for excluding them. I think I know what the reason was for excluding them: it wouldn't have got through the parliament! But that is another issue.

**Mr Walter:** How about we take that on notice. We'll come back. Unfortunately, Ms Atkinson and I are not in a position—we didn't develop the legislation; it was handed to us to implement.

**Senator ABETZ:** Exactly.

**Mr Walter:** So we can look at that.

**Senator ABETZ:** Don't sweat too much on it. I do have the benefit of being on the PJCIS, so I've had a few briefings. Thank you.

**CHAIR:** Can I clarify the registration is of all former ministers, is that correct? Or former shadow cabinet ministers also?

**Mr Walter:** It's just cabinet ministers.

**CHAIR:** Just cabinet, so shadows are not involved. It's only the ministers not assistant ministers?

**Ms Atkinson:** There are two categories. One is former cabinet ministers, and that would be any members of the cabinet, so I'm not sure whether that would include any assistant ministers. They have a lifetime obligation to register any activity. Then you have a separate category, which is recent designated-position holders, which would include all former parliamentarians, all former senior advisers and chiefs of staff, heads of agency and deputy heads of agency, and ambassadors.

**CHAIR:** Have you written to all of those people who are potentially affected by that?

**Ms Atkinson:** We've endeavoured to. Trying to find contact details for that vast number of individuals has been a bit challenging. We're looking at strategies like asking the Commonwealth Superannuation Corporation to alert all of its members, given that lots of recent designated position holders would be members of their schemes.

**Senator KITCHING:** You could try the political parties, unless they've resigned from the party!

**Ms Atkinson:** We have written to all of the political parties.

**Senator ABETZ:** So one assumes you've written to me about this?

**Ms Atkinson:** Yes. There was a letter that went to all sitting members of parliament asking—

**Senator ABETZ:** Yes, but as a former cabinet minister? I'm not sure—

**Ms Atkinson:** So a letter went to all current—

**Senator ABETZ:** Which category do I sit in?

**Ms Atkinson:** That's a very good question.

**CHAIR:** Did you get two letters?

**Senator ABETZ:** Then there is the other question. I happen to be the chair of the Australia-Germany Parliamentary Friendship Group and also of the Australia-Israel Parliamentary Friendship Group. I'm just wondering, given my former status as a cabinet—which I must say had not exercised my mind until just now—whether I should potentially be registering, given that I have this close relationship.

**Ms Atkinson:** I think the answer is no, while you're a sitting member of parliament.

**Senator ABETZ:** Thank you. Can Hansard underline that!

**Ms Atkinson:** Section 25A of the act exempts all current members of parliament and statutory office holders.

**CHAIR:** There is your underline!

**Senator ABETZ:** So even if you are a former cabinet minister?

**Ms Atkinson:** Yes. If you are still here.

**Senator ABETZ:** That's interesting. So you're protected.

**CHAIR:** While you are in here.

**Senator ABETZ:** Thank you.

**Senator FIERRAVANTI-WELLS:** Going back to clarify those special obligation categories, they would cover, for example, somebody who was, say, a serving military officer who's now, without naming names, the chairman of a major foreign corporation? That's the sort of person that is covered by this sort of scheme?

**Mr Walter:** It covers former ministers; parliamentarians; senior ministerial advisers, which includes senior adviser and chief of staff; agency and deputy agency heads, and I'm trying to think of the translation in Defence terms, but for us secretaries and deputy secretaries; ambassadors; high commissioners—

**Senator FIERRAVANTI-WELLS:** And their equivalents in the military structures?

**Ms Atkinson:** Yes. So Chief of Defence and chief of services.

**Senator FIERRAVANTI-WELLS:** Can I just be very frank. We all know what we're talking about here and the particular Chinese company. I'm interested to know if someone like John Lord, its chairman, is covered by that. That's my direct question.

**Mr Walter:** There are two other things in that category, which is different to cabinet ministers. Cabinet ministers have a lifetime obligation for anything they do. For this category, it's a 15-year obligation—so 15 years after you've left the position that would put you into that category. Then you have to be using the experience, contacts, skills that you acquired as a result of that position you held, in relation to that entity to then have to register. So if you could say for that individual: 'Sure they're doing it for a foreign related entity, but it's completely unrelated to anything they've done before,' then they wouldn't have to register.

**Senator FIERRAVANTI-WELLS:** Let me take you on another tack. I know you're writing to a lot of organisations. Are you doing that to organisations that don't necessarily speak English?

**Ms Atkinson:** Yes. We have reached out to a range of culturally and linguistically diverse organisations and media outlets, for example. We are in the process of having a range of information sheets translated into the top 10 languages spoken in Australia. They'll be available on our website. In the meantime, when people call there's an opportunity for them to request a translator to assist them with the call. So we can provide that support in the interim.

**CHAIR:** Do you send any correspondence in other languages?

**Ms Atkinson:** No, not to date.

**Senator FIERRAVANTI-WELLS:** I suggest that you really, seriously consider that.

**Ms Atkinson:** Sorry, just to clarify, we have run public notices in, I think, 10—

**CHAIR:** Which is a general—

**Ms Atkinson:** In 10 or 20—

**Mr Walter:** In newspapers.

**Ms Atkinson:** CALD outlets, but in their particular language.

**Senator FIERRAVANTI-WELLS:** Let me give you a specific example for when you look at the specific exemptions to this. An organisation here in Australia undertaking religious or related religious educational activities gets direct funding from a foreign government. We know that that's happening. Certain religious figures are getting direct funding from a foreign organisation, often in a foreign language. How do you deal with that? Where there is direct influence, and we know Attorney-General's, of all organisations, should be aware of some of those activities, are those organisations—that is, the grassroots organisations here in Australia—exempt or are they on your radar?

**Mr Walter:** The first question, I guess, is: with that organisation that's getting the funding, is it doing anything that would be a registrable activity, such as parliamentary lobbying and general political lobbying? Are they dispersing stuff in order to influence the outcome of a decision or an election or things like that? If they're not, if they're just getting funding from a foreign government—take Alliance Francaise as a nice, neutral example.

**Senator FIERRAVANTI-WELLS:** Or the Confucius institutes.

**Mr Walter:** Yes, there's the Confucian institute as well. But, if you take the Alliance Francaise example, they provide education to people in Australia. They get some funding out of the French government. If they never undertake any of those activities then there's no need for them to register.

**Senator FIERRAVANTI-WELLS:** Let me give you two examples. What about an organisation that gets direct funding and operates a religious organisation here in Australia? For example, a number of the Muslim communities get direct funding from Saudi Arabia. Are they excluded from that?

**Ms Atkinson:** There is an exemption that covers religious activities undertaken in good faith on behalf of the foreign principal. It would be a question of the nature of the activity that they're undertaking, as Andrew says. If it's a religious activity, it's exempt. If it's an education activity—they're providing a school based on Islamic faith—then that's not covered.

**Senator FIERRAVANTI-WELLS:** Let me give you two examples. The Italian community has an Italian school, an Italian organisation, similar to Islamic schools. These school organisations get direct funding from different countries around the world to undertake educational activities in Australia. They are the recipients of Australian government funding as a consequence of what they do, and from time to time will engage in activities seeking more funding or seeking funding beyond the educational—for example, they might engage also in aged-care activities or disability activities or other care activities and things like that. So, from time to time, they may lobby the Australian government for additional funding. Where do they sit?

**Mr Walter:** Are they doing it on behalf of the foreign related entity, on behalf of the foreign government? There's a critical question there.



**Senator FIERRAVANTI-WELLS:** That's the criterion.

**Mr Walter:** There are a series of questions. One is, simply: are they doing it on behalf of the foreign government?

**Senator FIERRAVANTI-WELLS:** Sorry to drill down, but I think that this exemplifies some of the issues—

**CHAIR:** The complexity of it.

**Senator FIERRAVANTI-WELLS:** The complexities that exist. Anybody—Italian organisations, German organisations or whatever—undertaking educational activities is doing it for the promotion of that language here in Australia, so one could argue that there is a direct benefit to the overseas country. I guess there are degrees, if I understand correctly, in what they're doing on behalf of that country.

**Mr Walter:** You could imagine a scenario where the Italian government says: 'We're a bit sick of funding you. You need to go off, and we're telling you!'

**Senator FIERRAVANTI-WELLS:** Which is happening with foreign governments at the moment. That's precisely the situation—

**Mr Walter:** 'that you should go away and lobby the Australian government too in their new funding round for whatever.'

**CHAIR:** 'Take the pressure off our budget, put it on yours.'

**Mr Walter:** Yes.

**Senator FIERRAVANTI-WELLS:** Which is quite common at the moment.

**Mr Walter:** So then we might be in scope, and then we need to think about exemptions, particularly on the religion side and the charity side.

**Senator FIERRAVANTI-WELLS:** All right. I just think that's a live issue, because I do know—sorry to take the time—

**CHAIR:** We've got four minutes.

**Senator FIERRAVANTI-WELLS:** I think that would be worthwhile, if you could—

**CHAIR:** Maybe put any more questions on notice, because it's been quite a short amount of time.

**Senator DEAN SMITH:** Very briefly, just following on from Senator Macdonald's three scenarios, are there any obligations on the serving parliamentarian to advise the person that they're engaging with of the scheme and their requirement to register?

**Mr Walter:** There is no obligation under the act to do that. We do encourage it though.

**Senator DEAN SMITH:** Of course.

**CHAIR:** So should there be a sign above our doors asking, 'Are you registered as a lobbyist?'

**Senator DEAN SMITH:** Or as you walk out, or as you accept a gift of something.

**Mr Walter:** Our motto is, 'Should you be registered?'

**CHAIR:** Yes.

**Mr Walter:** We can send you some advertising material.

**Senator FIERRAVANTI-WELLS:** Or 'Are you aware?' Maybe it should be compulsory!

**Senator DEAN SMITH:** But there's no obligation on the serving parliamentarian, and there's no penalty either.

**Mr Walter:** For the parliamentarian? No.

**Senator DEAN SMITH:** Okay; thank you.

**CHAIR:** We've only had a short time, but that has been really quite instructive and I think will help us along the journey that we're on for a little while with regard to this. There will be additional questions. The secretariat will send a series of questions to you that we didn't even get to here today, and I just invite any senators, if there is anything further that you wanted to add, please go ahead.

**Senator KITCHING:** Sorry, I will ask one thing, and you don't need to answer this now: is 'good faith' a subjective or an objective test under the scheme? You don't have to answer it now; you can take it on notice.

**Ms Atkinson:** It's a good question. We will come back to you on that.

**CHAIR:** Mr Mehra, did you want to add anything further to the conversation?

**Mr Mehra:** No, not really. For me, any question that is linked to the IT implementation of the scheme and any information on that will be my domain to provide comment on.

**CHAIR:** So can I just give you a question on notice straight up from the opening statement made by Mr Walter? The implementation of the web based register and the process have been a little difficult, so could you give us a potted view of some of the problems you've encountered, how you resolved those and any problems that are yet to be resolved? Do you have a time line in terms of resolution, or is there a massive change of technology that's required for you to get there?

**Mr Mehra:** From day one the challenge has been implementing a solution that is quite organic in a way, because the policy is developing as we're getting more information. It's not one of those systems where we can actually have all of the requirements laid out right at the beginning. This has, in a way, motivated us to work very closely with business and keep some room to change the environment—whether the person has to click these two check boxes or the button here—so that has been a little bit of a challenge.

In terms of the technology, I think whatever we have built should be able to accommodate any of the minor changes that business may throw at us. Right from day one we've had to make sure that the system is fairly bulletproof on the cybersecurity side of things, given the interest that a lot of people may have in the system. That has been our No. 1 priority.

**CHAIR:** Have you been subject to any cyberattacks?

**Mr Mehra:** There are always connections coming up—

**CHAIR:** People testing your system?

**Mr Mehra:** but what we have done to minimise that vulnerability is apply a penetration-testing exercise ourselves. We basically ask third-party companies to go and hit the application with whatever tools they have and whatever vulnerabilities they're aware of. It was only after receiving a positive report from that activity that we went ahead with the production launch.

**Mr Walter:** And perhaps one last thing, Chair: once you get further down the track in terms of your process, if you are looking at implementing a scheme, then we're very happy to offer whatever assistance we can in terms of advice from our own experience and to work informally with the committee, and the department as well.

**CHAIR:** All right. Thank you very much for your time today.

**In camera committee adjourned at 13:54**

## SENATE STANDING COMMITTEE OF PRIVILEGES

### Briefing on the Foreign Influence Transparency Scheme

#### Responses to Questions on Notice

##### Question 1

On page 5 of the proof Hansard, in response to the following statement from Mr Andrew Walter, First Assistant Secretary, Integrity and Security Division:

**Mr Walter:** We have written letters to certain individuals and entities in Australia suggesting that they might want to consider whether they have an obligation to register, where we have a view that they probably have to. That's been the first step rather than going in and saying, 'Hey, we're going to exercise powers in relation to this thing,' and that kind of thing.

In response to that statement, Senator O'Neill asked the following question on notice:

**How many of the 26 registrations were achieved through that process?**

##### **Response:**

As part of the Attorney-General's Department's (the department) activities designed to raise awareness of the scheme, we have written to several hundred individuals and entities to advise them of the registration obligations under the scheme and encourage them to make an assessment about whether they need to register.

Given the breadth of the department's outreach activities, it is difficult to determine whether registrants have registered as a direct consequence of receiving a letter or broader awareness of the scheme. However, we are aware that at least one registration has been achieved in response to a letter.

##### Question 2

**What the policy decision arguments may or may not have been for including parliamentarians and for excluding them?**

The *Foreign Influence Transparency Scheme Bill 2017* was introduced into Parliament on 7 December 2017 and referred to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on 8 December 2017 for inquiry and review.

The PJCIS tabled its report on the Bill on 25 June 2018. Recommendation 29 of the report notes that:

*The Committee recommends that the Bill be amended to provide that the Foreign Influence Transparency Scheme does not apply to members of the House of Representative or Senators.*

*The Committee further recommends that the House of Representatives and the Senate develop a parallel parliamentary foreign influence transparency scheme, imposing on Members and*

*Senators similar transparency obligations to those in the Bill, but appropriately adapted for the parliamentary environment.*

*In developing that parallel scheme, the Houses should consider all conduct undertaken by Members and Senators in the course of their duties as parliamentarians, including conduct not directly related to proceedings in the Parliament. The scheme should be administered independently within the Parliament, and include:*

- *an obligation to report registrable activities undertaken on behalf of a foreign principal, or registrable arrangements with a foreign principal, appropriately adapted for the parliamentary environment,*
- *a power for the administrator to obtain information and documents, and*
- *appropriate sanctions for non-compliance.*

### Question 3

**Mr Walter:** We can send you some advertising material

### **Response:**

The department has developed a range of fact sheets, available on the department's website, to assist the public to understand how the scheme works and to help a person determine whether registration obligations apply. The fact sheets are available at:

<https://www.ag.gov.au/Integrity/foreign-influence-transparency-scheme/Pages/Resources.aspx>

In addition, the department has commissioned three public notices which have run in major metropolitan and regional newspapers, as well as a range of culturally and linguistically diverse newspapers. These notices ran to coincide with the commencement of the scheme on 10 December 2018, the end of the grace period on 10 March 2019 and on the issuing of the writs for the Federal Election on 11 April 2019. A list of the outlets which ran the notices and an example of each notice is at **Attachment A**.

### Question 4

#### **Is 'good faith' a subjective or objective test under the scheme?**

Under section 27 of the FITS Act, a person is exempt in relation to a religious activity the person undertakes, in good faith, on behalf of a foreign principal.

The term 'good faith' is not defined in the Act and will therefore assume its ordinary meaning, referring to circumstances where a person acts with honesty and with sincere intention. This is a subjective test, rather than an objective one.

### Question 5

**Could you give us a potted view of some of the problems you've encountered, how you resolved those and any problems yet to be resolved? Do you have a time line in terms of resolution, or is there a massive change of technology that's required for you to get there?**

The IT system which has been built to support the scheme comprises of multiple application components including a web portal/Public register and a customer relationship

management/internal administration portal. This approach has been taken to enable the business area to manage all facets of the scheme in a secured and seamless manner while delivering a positive experience for registrants.

The main difficulty was building a system that was fit for purpose and enabled registrants to meet their legal obligations within a limited timeframe (i.e. it needed to be live on scheme commencement). This has meant that since original deployment, the system has benefited from improvements to layout and functionality to improve the user experience. For example, since commencement of the scheme, changes have been implemented to automate workflows (improving the useability of the scheme for departmental officers), a user-initiated password reset functionality has been added and search functions have been added to the Public Register to enhance its transparency objective.

The system has been fit for purpose and secure since commencement of the scheme. The department will continue to improve the system to help registrants maintain their registration/s and to improve the efficiency of administering the scheme.

#### Question 6

**The initial funding allocation for the Foreign Influence Transparency Scheme was \$3.2 million over four years from 2018-19 (MYEFO 2017-18, Appendix A, p. 137). Are you able to explain:**

- **what the \$3.2 million is intended to cover?**
- **how the funding is allocated across the four years?**
- **Does the nature of the expenditure change over the four years, for example, does it move from funding IT infrastructure to funding staffing?**

As part of the development of the Foreign Influence Transparency Scheme Bill, the department received \$3.2 million in the 2017-18 Mid Year Economic and Fiscal Outlook (MYEFO). The funding allocation was determined before the Act was passed by Parliament. As such, it was intended to cover the costs of the development and introduction of the scheme as it was conceived upon introduction to Parliament, including:

- staffing costs and ASL to process registrations, undertake education and outreach, policy work, reporting and other scheme-related administration; and
- staffing costs, ASL and capital funding for IT support and maintenance.

#### Question 7

**MYEFO 2017-18 also stated that there would be \$0.8 million in related capital for the Attorney-General's Department for the Scheme (MYEFO 2017-18, Appendix A, p137). Could you explain what that refers to?**

The department also requested \$767,000 of capital funding to build a dedicated IT system and database to store, manage and process registrations.

Question 8

**Initially the FIT Scheme was structured with a charge to be applied on registration and renewal of registration. It was estimated that these registration charges would raise \$0.5 million (MYEFO 2017-19, Appendix A, p137). That charging regime was subsequently removed from the FITS and the Supplementary Explanatory Memorandum noted that this removal of the charging regime would not affect the financial impact. Are you able to provide some background to the initial inclusion of the charging regime and its subsequent removal?**

The scheme was originally designed to be partially cost recovered through charging registrants a small fee for registration and renewal of registration. The *Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017* was introduced into Parliament at the same time as the *Foreign Influence Transparency Scheme Bill 2017*.

Recommendation 34 of the PJCIS' inquiry into the Bill recommended that the FITS Bill be amended to remove section 63 (a clause to allow for the levy of charges), and that the Foreign Influence Transparency Scheme (Charges Imposition) Bill be withdrawn. The PJCIS noted that seeking access to elective representatives should not be accompanied by the imposition of a fee and the Committee considers that the charges for initial registration, renewal and reporting lodgement should be removed. The Government accepted this recommendation and the Bill was withdrawn.

Question 9

**MYEFO 2018-19 provides an additional \$4 million in funding over 2 years for 'implementation of the FIT Scheme'. What is that additional funding for?**

Following the passage of the FITS Act through Parliament, in the 2018-2019 MYEFO, the department received additional resourcing of 4.3ASL and \$4 million, terminating on 30 June 2020.

This additional amount was considered necessary to ensure the department is sufficiently resourced to administer the scheme as it was agreed by Parliament. The Parliamentary process introduced several new features to the scheme – including a Transparency Notice framework and changes to narrow the scope of application.

As a result, the department received additional funding to implement a comprehensive public education and outreach strategy, to administer the Transparency Notice framework and to undertake additional compliance and reporting activities.

Question 10

**The Act has been amended twice following its passage through the Parliament. What are the circumstances which have led to those amendments?**

The *Foreign Influence Transparency Legislation Amendment Act 2018* was introduced into Parliament in November 2018 and passed in December 2018. The amendments were introduced to give better effect to the underlying transparency purpose of the *Foreign Influence Transparency Scheme Act 2018* (the FITS Act) and to ensure that the information made publicly available about a person's registration remains available after a person ceases to be registered. This amendment has ensured the public will be able to access information

about past instances of foreign influence registered under the scheme. The amendments also shortened the grace period applying to person who had existing arrangements with foreign principals in place, from six months to three months. This ensured that these arrangements would be required to be registered and transparent in time for the 2019 Federal Election.

The *Foreign Influence Transparency Scheme Amendment Act 2019* (Amendment Act 2019) was introduced into Parliament in February 2019 and passed in April 2019. The amendments made some technical amendments to the FITS Act to enhance its transparency purpose and in response to stakeholder feedback. In particular, the Amendment Act 2019 aligned the reporting and disclosure obligations of registrants during a voting period, ahead of the 2019 Federal Election.

#### Question 11

##### **What was the nature of the consultations undertaken on development of the Foreign Influence Transparency Scheme Rules 2018 (the Rules)?**

The department undertook consultation on the draft rules with a range of government and non-government stakeholders in November 2018. Through these consultations, participants were also given the opportunity to engage with the team and ask questions about how the scheme would work in practice and raise any areas of concern.

#### Question 12

##### **What was the policy reason behind the inclusion of staff employed under the *Members of Parliament (Staff) Act 1984* as an exemption under the Rules?**

In November 2018, the department briefed the PJCIS on the progress of the implementation of the scheme. The PJCIS raised concerns that it was not explicitly clear that a person employed under the *Members of Parliament (Staff) Act 1984* would be exempt from having to register. Members indicated that this was important, given the privileged nature of their role and the fact that these people are so closely linked to the work of Parliamentarians. Legal advice obtained from AGS provided that to put this issue beyond doubt, additional rules should be made to exempt this category of person when acting in the ordinary course of their duties.

#### Question 13

##### **Has the Secretary delegated any of his functions or powers pursuant to section 67 of the Act? If so, to whom have those functions or powers been delegated?**

A number of the Secretary's powers and functions under the FITS Act have been delegated. The delegations are as follows:

Statutory (or other) Provision of the FITS Act specifying power	Delegate's Office
Subsection 39(4) – align or extend renewal periods for registration	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch

	Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Section 42 – keep a register of information in relation to the scheme	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Section 43 - make information publicly available on a website	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch
Section 44 - correct or update information in the register	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Subsection 45(2) - require a person to provide information or documents relevant to the scheme	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch
Subsection 45(4) - extend the period in which the person is to provide the information or documents	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch
Subsection 46(2) - require a person to provide information or documents relevant to the operation of the scheme	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch
Subsection 46(4) - extend the period in which the person is to provide the information or documents	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch
Subsection 48(1) - inspect a document or copy, and make and retain copies of such a document	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Subsection 48(2) – retain possession of a copy of a document	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Subsection 49(1) - take and retain possession of a document	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch



	Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Subsection s49(2) and 49(3) - certify copy of a document, and use the certified copy	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Subsection 49(4) – permit a person to inspect and make copies of the document	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Subsection 53(1) – communicate scheme information	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch
Section 66 – approve a form for the purposes of the provision of the FITS Act, and approve a manner for giving notice or renewal under the FITS Act	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme
Section 68 – enter into a written agreement with a person to perform services in relation the scheme, and make payment to the person in accordance with any such agreement.	Deputy Secretary, Integrity and International Group First Assistant Secretary, Integrity and Security Division Assistant Secretary, Institutional Integrity Branch Assistant Secretary, Integrity Branch Assistant Secretary, Security and Criminal Justice Branch Director, Foreign Influence Transparency Scheme

#### Question 14

**How many staff of this department are currently working on the establishment and implementation of the register? Has that number increased or decreased over time? What is the anticipated longer-term staffing for the FIT Scheme and the register?**

The department was provided funding for the ASL for the scheme in MYEFO 2017-2018 and additional funding in MYEFO 2018-2019. The ASL funding breakdown for the scheme is as follows:

	2018-2019	2019-2020	2020-2021
MYEFO 2017-2018	3.9	3.9	3.9
MYEFO 2018-2019	2.15	4.3	Nil
<b>Total ASL</b>	<b>6.05</b>	<b>8.2</b>	<b>3.9</b>

Question 15

**Can you please give the committee an overview of the enforcement provisions in the bill?**

The FITS Act contains a number of offences for non-compliance. The offences and associated penalties provide a meaningful and serious deterrent for non-compliance with the scheme and provide the department with a means to pursue a person who is deliberately undermining its transparency objectives.

The offences include:

- Undertaking registrable activities while not being registered under the scheme – the maximum penalties for these offences range from six months to five years imprisonment, depending on the seriousness of the conduct.
- Failure to fulfil responsibilities (such as reporting obligations) under the scheme – the maximum penalties for these offences range from a fine of 60 penalty units to six months imprisonment, depending on the seriousness of the conduct.
- Providing false and misleading information or documents in relation to a registration – the maximum penalty for this offence is three years imprisonment.
- Destroying records in connection with the scheme – the maximum penalty for this offence is two years imprisonment.

Question 16

**The offences in section 57 of the Act required that a person knows that they are required to be registered under the Scheme. How does the department envisage that the Commonwealth could satisfy that element of the offence in a prosecution?**

Section 57 establishes a number of tiered criminal offences for failing to apply for, or renew registration. The most serious of these offences requires that a fault element of knowledge will apply. Under section 5.3 of the Criminal Code, a person has knowledge of a circumstance if he or she is aware that it exists or will exist in the ordinary course of events. Establishing the fault element of knowledge will need to be determined on a case by case basis. Matters that might go to establishing the knowledge fault element would include where the department has taken steps to contact a potential registrant to explain their potential obligations and seek their cooperation to register.

Question 17

**Could the principles required to be achieved in the Parliamentary Scheme by an MP lodging or tabling their meeting schedules?**

It is a matter for the Committee to determine whether the requisite transparency principles of a Parliamentary Scheme would be achieved by requiring an MP to publicly lodge or table their meeting schedule.

However, it is important to note that the existing scheme captures four categories of foreign influence activities: parliamentary lobbying, general political lobbying, communications activity and disbursement. A schedule would disclose some details about those who might be

lobbying an MP, but may not provide the same degree of transparency as is available through the requirements of the FITS Act into the activities the MP themselves undertakes which are not done through a specifically scheduled meeting. For example, it would not disclose whether a particular meeting involved the MP undertaking lobbying on behalf of a foreign principal (unless accompanied by more detail) or provide information about communications activity by the MP on behalf of a foreign principal – for example, by writing letters, distributing press releases or writing opinion pieces.

#### Question 18

#### **Do you see any requirements to use the Parliamentary FITS Register to verify entries on the Executive FITS Register?**

We see significant potential benefit in ensuring that the Parliamentary and Executive Registers can be compared. Ideally, one would provide a mechanism to ensure the transparency objective of the other is being achieved – including potentially by sharing information which is not available through public registers. However, appropriate information sharing provisions would be required to enable this latter functionality.

#### Question 19

#### **In what circumstances would you take the view that an MP had acted at the behest of a foreign principal?**

Under section 11 of the FITS Act, a person is acting on behalf of a foreign principal if the person undertakes an activity in any of the following circumstances:

- under an arrangement with a foreign principal,
- in the service of a foreign principal,
- on the order of a foreign principal, or
- under the direction of a foreign principal.

Regardless of the nature of the relationship between the person and the foreign principal, both the person and the foreign principal must have known or expected that the person would or might undertake the activity.

Question 20

**Is there any attempt in the scheme to capture relationships with foreign principals who are in opposition?**

A foreign principal is defined in section 10 of the FITS Act to be:

- a foreign government,
- a foreign political organisation,
- a foreign government related entity, or
- a foreign government related individual.

For the purposes of this definition, a foreign political organisation means a foreign political party or a foreign organisation that exists primarily to pursue political objectives. The definition is intended to cover political parties that are formally recognised or registered in a foreign country or part of a foreign country, as well as organisations that are akin to, and engage with the political system of the relevant country in the same way as a formally recognised political party, even if that country does not have a system of registration for political party or even if that party is considered to be in opposition.

Registration obligations apply irrespective of whether a person is seeking to influence a change in policy/process or to maintain the status-quo.

## Attachment A

Public notices advising of the scheme's commencement, the end of the grace period and following the issuing of the writs for the Federal Election were published in the following metro, regional and foreign language publications:

- 17 metro & regional publications:
  - The Weekend Australian
  - The Australian Financial Review
  - The Daily Telegraph
  - The Sydney Morning Herald
  - The Herald Sun
  - The Melbourne Age
  - The Brisbane Courier Mail
  - The Adelaide Advertiser
  - The Hobart Mercury
  - The Northern Territory News
  - The Canberra Times
  - The Newcastle Herald
  - The Cairns Post
  - The Gladstone Observer
  - The Mackay Daily Mercury
  - The Townsville Bulletin
  - The Launceston Examiner
  
- 19 foreign language publications in the following languages:
  - An Nahar (Arabic)
  - El Telegraph (Arabic)
  - Future (Al Mestaqbal) (Arabic)
  - Australian Chinese Daily (Chinese)
  - Epoch Times (Chinese)
  - Sing Tao (Chinese)
  - The Greek Herald (Greek)
  - La Fiamma (Italian)
  - Il Globo (Italian)
  - The Sydney Korean Herald (Korean)
  - Melbourne Journal (Korean)
  - Aust Macedonian Weekly (Macedonian)
  - Today denes (Macedonian)
  - Arguments and Facts (Russian)
  - Horizon (Russian)
  - El Espanol en Australia (Spanish)
  - Dünya (Turkish)
  - Australian Turkish News (Turkish)
  - Chieu Duong – Sunrise Daily (Vietnamese)

Copy of notice published on scheme commencement (December 2018):



## Foreign Influence Transparency Scheme to commence on 10 December 2018

The Foreign Influence Transparency Scheme will give the public and government decision-makers visibility of the nature, level and extent of foreign influence on Australia's government and political process in the interest of maintaining an open and diverse democracy.

The scheme commences on **Monday 10 December 2018**. Individuals or entities undertaking activities on behalf of a foreign principal may need to register under the scheme.

Whether an individual or entity is required to register will depend on who the foreign principal is, the nature of the activities undertaken, the purpose for which the activities are undertaken, and in some cases, whether the person has held a senior public position in Australia. There are a number of exemptions to registering under the scheme.

Activities covered by the scheme include parliamentary lobbying, general political lobbying, communications activity or disbursement activity, done on behalf of a foreign principal for the purpose of political or governmental influence. Former Cabinet Ministers and individuals who have held a senior public position in Australia in the last 15 years also have additional registration obligations when acting on behalf of a foreign principal.

This scheme provides an important safeguard to Australia's democratic processes and ensures diverse opinions can be shared openly and transparently.


To register or find out more about the scheme, visit:  
[www.ag.gov.au/transparency](http://www.ag.gov.au/transparency)

---

Authorised by the Australian Government, Canberra.

01242

Copy of notice published at the end of the grace period (March 2019):



## Foreign Influence Transparency Scheme – registration grace period ends 10 March 2019

The introduction of the Foreign Influence Transparency Scheme on 10 December 2018 is a major step forward by the Australian Government to enhance transparency of the level of foreign influence activities occurring in Australia with regard to political or government processes.

Australia is a robust democracy and welcomes a diverse range of views so long as these views are conveyed in an open and transparent manner.

The scheme introduced public reporting requirements for people and entities that undertake certain activities in Australia on behalf of a foreign principal.

A three month grace period for activities and arrangements that were already in place prior to the commencement of the scheme will end on **10 March 2019**. Individuals or entities undertaking activities on behalf of a foreign principal should familiarise themselves with their obligations under the scheme as they may need to register before the grace period ends.

Whether an individual or entity is required to register will depend on who the foreign principal is, the nature of the activities undertaken, the purpose for which the activities are undertaken, and in some cases, whether the person has held a senior public position in Australia.

Registerable activities covered by the scheme include:

- parliamentary lobbying
- general political lobbying
- communications activity; and
- disbursement activity

Activities become registerable when undertaken on behalf of a foreign principal for the purpose of political or governmental influence, unless an exemption applies.

**Former Cabinet Ministers** and individuals who have held a **Senior public position** in Australia in the last 15 years also have additional registration obligations when acting on behalf of a foreign principal.

Penalties apply to those who do not comply with a requirement to register.

For more information or to register, visit:  
[www.ag.gov.au/transparency](http://www.ag.gov.au/transparency)

---

Authorised by the Australian Government, Canberra.

01696

Copy of notice published on the issuing of the Federal Election writs (April 2019):



## Foreign Influence Transparency Scheme – Additional requirements during the 2019 Federal Election

The Foreign Influence Transparency Scheme is a major step to enhance transparency of the level of foreign influence activities affecting Australia's federal political or government processes.

The scheme requires individuals or entities undertaking certain activities on behalf of foreign principals to register those activities, unless an exemption applies.

Australia is a robust democracy and welcomes a diverse range of views, so long as these views are conveyed in an open and transparent manner.

During election periods, the importance of transparency is heightened. For this reason, the scheme imposes additional obligations during a voting period.

**These additional obligations are now in effect.** They apply until the last polling stations close on the day of the 2019 Federal Election (May 18).

The additional obligations are that:

- Each registrant must review their information and either update it or confirm that it is up-to-date within 14 days of the election being announced.
- During a voting period, any parliamentary lobbying, general political lobbying or communications activity undertaken on behalf of a foreign principal which relates to the vote must be reported within seven days.
- Persons giving out money or things of value on behalf of a foreign principal must also report those disbursement activities within seven days of the value of disbursements reaching the threshold of \$13,800 or a multiple of the threshold.
- Any communications materials produced or distributed on behalf of a foreign principal are also required to contain a disclosure, making apparent the identity of the foreign principal – much like the disclosure required in a candidate's advertising materials.

Penalties apply to those who do not comply with the requirements listed above.

For more information on the scheme and the additional requirements during the Federal Election period, or to register visit: [www.ag.gov.au/transparency](http://www.ag.gov.au/transparency)

Authorised by the Australian Government, Canberra.

98320





**REX PATRICK**  
Centre Alliance  
Senator for South Australia

Senator Deborah O'Neill  
Chair, Senate Standing Committee on Privileges  
Parliament House  
CANBERRA ACT 2600

*Deb*

Dear Senator O'Neill

Thank you for your letter of 19 September 2019 inviting me to make a submission to the Senate Standing Committee on Privileges Inquiry on "The development of a Foreign Influence Transparency Scheme to Apply to Parliamentarians".

My submission is attached. Please advise me if you require any further clarification or information.

Yours sincerely

**REX PATRICK**  
*(21 10 2019)*

**Electorate Office**

Level 2, 31 Ebenezer Place  
Adelaide, South Australia 5000  
Phone: (08) 8232 1144  
Fax: (08) 8232 3744  
Email: [Senator.Patrick@aph.gov.au](mailto:Senator.Patrick@aph.gov.au)

**Parliament House**

Canberra, ACT 2600  
Phone: (02) 6277 3713  
Fax: (02) 6277 5834

## A Parliamentary Foreign Influence Transparency Scheme

### Submission to the Senate Standing Committee of Privileges

#### Introduction

1. Some fifteen months have passed since the Parliament passed the *Foreign Influence Transparency Act 2018* (the FITS Act) which established a reporting and public disclosure regime for persons and organisations who are acting on behalf of foreign governments or foreign political organisations and associated entities to influence Australian government and political processes.

2. At that time, 28 June 2018, the Government insisted, and the Opposition agreed, that the legislation was urgently required to help protect Australian democracy from covert foreign interference. Administered by the Attorney-General's Department, the Foreign Influence Transparency Scheme came into effect on 11 December 2018, ten months ago.

3. Prior to its passage through the Parliament, the *Foreign Influence Transparency Bill 2017* was subject to review by the Parliamentary Joint Committee on Intelligence Services (PJCIS). In its bipartisan advisory report tabled on 25 June 2018, the PJCIS recommended that the Bill be amended to provide that the Foreign Influence Transparency Scheme would not apply to members of the House of Representatives or Senators. The PJCIS instead recommended that the House of Representatives and the Senate jointly establish a parallel foreign influence transparency scheme for MPs and Senators. This recommendation reflected the special position of parliamentarians as democratically elected representatives and the importance of parliamentary privilege in protecting MPs and Senators engaged in parliamentary business.

4. In this regard the PJCIS made the following observation:

*Although it is important that parliamentary privilege is not abrogated, the Committee considers that members of parliament should not as a result be excused from the transparency obligations placed on other members of the public. The Committee strongly endorses the principle that Senators and MPs should be transparent about when they are representing foreign government and related interests. However, given the unique nature of Parliamentarians' work, and the unique status of the Parliament and its privileges, it is more appropriate that the Parliament establish its own registers.*

5. The PJCIS further recommended that in developing a parallel Parliamentary Transparency Scheme, consideration should be given to covering

to *all* activity undertaken on behalf of a foreign principal by Members and Senators in the course of their duties as parliamentarians, including activity not directly related to proceedings in the Parliament. It was proposed that the Parliamentary Transparency Scheme should be administered independently within the Parliament; that it should include an obligation to report registrable activities undertaken on behalf of a foreign principal, or registrable arrangements with a foreign principal; that the scheme should be appropriately adapted for the parliamentary environment; and that it should include power for an administrator to obtain information and documents, with appropriate sanctions for non-compliance.

6. In response to the PJCIS recommendations, the Government introduced an amendment to the Bill that was adopted and now stands as Section 25A of the FITS Act which provides that a person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if the person is a member of the Australian Parliament; is a member of the Parliament of a State or a member of the Legislative Assembly of the Australian Capital Territory or the Legislative Assembly of the Northern Territory; or holds any office or appointment under the law of the Commonwealth, or under the law of a State or Territory.

#### **A Parliamentary Foreign Influence Transparency Scheme**

7. Fifteen months on from the passage of that legislation, the establishment of a Foreign Influence Transparency Scheme for Federal MPs and Senators should now be treated as a matter of some urgency.

8. It is highly anomalous that the members of the Australian Parliament, arguably the ultimate targets of influence and interference activities conducted by foreign governments and their intelligence services, should not be subject to the same disclosure obligations that apply to all other Australians.

9. Considering the provisions of the FITS Act and the recommendations of the PJCIS Report, I would urge that a Parliamentary Foreign Influence Transparency Scheme should include, as an absolute minimum, reporting and disclosure requirements for serving MPs and Senators at least as rigorous and extensive as the provisions currently applying to former Cabinet Ministers and recent designated position holders under the current Foreign Influence Transparency Scheme.

10. Such a minimum disclosure requirement would extend to include *all* activities beyond the categories of “registrable activity” defined in the FITS Act (parliamentary lobbying, general political lobbying, communications activity or disbursement activity). Under such a transparency regime, the types of information and disclosures required to be provided by MPs and Senators would

be the same as those provided by former Cabinet Ministers and recent designated position holders under the FITS Act.

11. However, taking into account the particular position of trust occupied by serving MPs and Senators, a strong case can be made for an even more rigorous reporting and disclosure regime to cover, with only two exemptions discussed below at paragraphs 24 and 25, *all activity undertaken by a serving MP or Senator on behalf of a foreign principal, and any arrangement made between a MP or Senator and a foreign principal*. Under such a transparency regime, the exceptions contained in the Foreign Influence Transparency Scheme such as those for humanitarian activities, legal advice and representation or religious activities, would not apply. This would properly reflect the primacy of the responsibility of elected MPs and Senators to represent their constituents and the Australian people more broadly.

### Definitions and Scope

12. Careful note should be taken of the definitions of “foreign principal” and activity undertaken “on behalf of a foreign principal” in the FITS Act.

13. Section 10 of the Act defines:

- i. A “foreign principal” as (a) foreign government, (b) a foreign government related entity, (c) a foreign political organisation, and (d) a foreign government related individual.
- ii. A foreign government as the government of a foreign country or part of a foreign country, an authority of a government of a foreign country or part of a foreign country, or a foreign local or regional government body.
- iii. A foreign political organisation is defined to include a foreign political party or a foreign organisation “that exists *primarily* to pursue political objectives” (emphasis added).

14. In the context of a Parliamentary Foreign Influence Transparency Scheme it may be necessary further clarify the definition of foreign political organisations in relation to international organisations such as the Inter-Parliamentary Union and the Commonwealth Parliamentary Association. This is discussed below at paragraph 25.

15. Section 10 further defines a “foreign government related entity” and “foreign government related individual” by reference to various criteria, the effect of which amount to the potential for total or substantial control by a foreign government or political organisation over the related entity or person.

16. Section 11 of the FITS Act provides that a person undertakes an activity on behalf of a foreign principal if that activity is:

- i. under arrangement with the foreign principal,
- ii. in the service of the foreign principal
- iii. on the order or at the request of the foreign principal, or;
- iv. under the direction of the foreign principal, and at that time both the person and the foreign principal knew or expected that the person would or might undertake the activity which would constitute a registrable activity under the scheme (parliamentary lobbying, general political lobbying, communications activity or disbursement activity, and other activities in the case of former Cabinet Ministers and recent designated position holders).

17. It should be understood that application of these definitions and concepts to the work and activities of MPs and Senators would not preclude or necessarily require disclosure of contact, meetings or discussions with foreign government representatives, foreign political organisations, other persons associated with foreign governments or organisations, or foreign persons generally.

18. The threshold for disclosure is activity undertaken on behalf of, or arrangements entered into with, a foreign government or political organisation or related persons or entities. Mere contact or discussion with foreign government representatives or a foreign political organisation would not be registrable. Further if an MP or Senator undertook activity on behalf of a private person or a non-government organisation that was primarily political in character and *not* related to a foreign government or foreign political organisation, then that activity would not need to be declared.

19. There would, however, be a clear requirement to disclose any activity undertaken on behalf of a foreign government or foreign political organisation – whether in relation to activities outside the Parliament or even more importantly in relation to the proceedings of the Parliament.

20. Thus, for example, if an MP or Senator:

- i. Undertook international humanitarian activity on behalf of a foreign government, or provided legal advice or representation on behalf of a foreign principal they would be obliged to register that activity.
- ii. Undertook activity entered into an arrangement with a foreign government or political organisation to undertake an activity, regardless of whether such activity occurred, they would be obliged to declare that arrangement.

- iii. Was or became a member of a foreign political organisation and sought directly or indirectly to influence the Australian Government, state or territory governments or Australian political processes generally then that relationship should be fully declared.
- iv. Delivered a statement within the Parliament on behalf of, at the direction of, or in the context of an arrangement with, a foreign government or foreign political organisation, then that activity and relationship should be fully disclosed.

21. Given the special status of Federal Parliamentarians as representatives of the Australian people, a high degree of transparency is essential. Such a transparency scheme would be a condition the Parliament imposes on its own members and as such there should be no conflict with parliamentary privilege and the freedom of MPs and Senators to contribute to parliamentary proceedings.

#### **Disclosure of Activities Prior to Parliamentary Service**

22. Consideration should also be given to extending to the more extensive disclosure obligations of MPs and Senators to cover activities undertaken on behalf of a foreign principal for a period *prior* to being elected to Parliament. The FITS Act currently establishes a disclosure and reporting regime for citizens outside the Parliament. However once a person has been elected to Parliament there is clearly a strong public interest for a more extensive disclosure of any activity undertaken on behalf of a foreign principal prior to the MP's or Senator's parliamentary service. When an MP or Senator enters Parliament, they should be prepared to provide a full accounting of any and all activities that have undertaken on behalf of a foreign principal, and any arrangements made with a foreign principal, prior to their parliamentary service – even if those activities or arrangements have ceased.

23. It is consequently recommended that the more extensive disclosure obligations of MPs and Senators should extend to cover a period of ten years prior to the beginning of their parliamentary service. In the case of currently serving MPs and Senators, the disclosure obligation concerning activities relating to foreign governments and political organisations should cover a period of ten years prior to the commencement of the Parliamentary Foreign Influence Transparency Scheme. (A ten-year disclosure timeframe is the same as that laid down by the Australian Government for the disclosure of past employment, residence and foreign travel information for the Australia's national security clearance levels Negative Vetting 1 and Negative Vetting 2).

## **Proposed Exemptions**

24. One specific exception to transparency and reporting for MPs and Senators should be in relation to activities undertaken in the course of official duties as a Minister of State (Cabinet Ministers, Ministers, Assistant Ministers or Parliamentary Secretaries). Ministers of State are already responsible to Parliament for the conduct of government business, including through the principles of ministerial responsibility, answering of questions and through scrutiny by Parliamentary Committee processes. However Ministers should be subject to the same rigorous transparency obligations in regard to non-Ministerial activities as would be other MPs and Senators.

25. One other possible exemption for MPs and Senators could relate to activities undertaken on behalf of certain designated international organisations directly related to the Parliament – for example the Inter Parliamentary Union (IPU) and the Commonwealth Parliamentary Association (CPA). These organisations could be regarded as foreign political organisations if the definition given in the FITS Act is applied. However the involvement of MPs and Senators in the work of the IPU and CPA and other international parliamentary organisations is undertaken with the approval of the Parliament and should be properly exempted from the Parliamentary Transparency Scheme.

## **A Legislated Parliamentary Foreign Influence Transparency Scheme**

26. A Parliamentary Foreign Influence Transparency Scheme should unquestionably be enacted in law. A less formal, non-statutory scheme, perhaps based on resolutions of the House of Representatives and Senate, would fall short of the framework already applying to all other Australians under the FITS Act which includes criminal offences for non-compliance. It would be highly anomalous to have a weaker scheme applying to MPs and Senators than that applying to all other Australians. A legislated transparency scheme is essential.

27. A single Parliamentary Transparency Scheme should be enacted to cover members of both Houses of the Australian Parliament – however there are a number of options with regard to the office holders responsible for the operation of the scheme and related administration, most importantly keeping a register or registers of scheme information.

28. In a statement on 11 September 2019, Senator Duniam advised the Senate that the Attorney-General's Department has held "*several discussions with officials from the Department of the House of Representatives and the Department of Parliamentary Services, including to explore options for a parliamentary scheme to leverage the IT infrastructure developed by the department to support the scheme they administer.*" While it may be the case

that the Attorney-General's Department can provide some helpful advice on the implementation of a Parliamentary Foreign Influence Transparency Scheme, it should be recognised that the administrative burden on the Parliament is likely to be modest in scale, both in terms of outreach to sitting MPs and Senators and maintaining a register or registers of scheme information. It is also clear that, consistent with the consideration of the issue and recommendation of the PJCIS, the Parliamentary scheme should be operated by the Parliament alone, quite separate from any executive government agency. (It would be inappropriate to place responsibility for the administration of the parliamentary transparency scheme with an agency such as the Independent Parliamentary Expenses Authority which is a statutory authority that is part of the executive government.)

29. A Parliamentary Transparency Scheme would be most appropriately overseen by the Presiding Officers with the Sergeant at Arms and the Usher of the Black Rod appointed to maintain separate registers, one for Members of the House of Representatives and the other for Senators. The Sergeant at Arms and the Usher of the Black Rod should perform this role in preference to the Clerks and Deputy Clerks who should not be put in a position where they could be conflicted in their ability to give advice to Senators. The Sergeant and Black Rod would have similar responsibilities and exercise similar powers in relation to the Parliamentary Transparency Scheme as the secretary of the department under the Foreign Influence Transparency Act (currently the Secretary of the Attorney-General's Department), including powers to obtain information and documents. (Alternatively a single register could be maintained by the Secretary of the Department of Parliamentary Services who is responsible to the two Presiding Officers; however such an administrative arrangement would be more removed from the two Chambers and the two Chamber security officials who have a keen sense of Parliamentary privilege and the nature of parliamentary business.)

30. The FITS Act allows the secretary of the department responsible for administration of the Foreign Influence Transparency Scheme to communicate scheme information, for certain purposes, to law enforcement and security agencies, as well as other persons subject to rules made by the Minister (currently the Attorney-General). Rules made by the Minister are subject to review by the PJCIS. Similarly the Parliamentary Transparency Scheme should also allow each of the Sergeant at Arms and the Usher of the Black Rod, subject to the consent of the relevant Presiding Officer, to similarly provide scheme information, if requested, to law enforcement and security agencies. The Speaker and the President should jointly make rules governing the provision of information to any other person – such rules also being subject to consultation with the PJCIS or else with the House and Senate Committees on Privileges.



### **Appropriate Sanctions for Non-Compliance**

31. The PJCIS recommended that the Parliamentary Foreign Influence Transparency Scheme should include “appropriate sanctions for non-compliance”. The penalties for non-compliance with the disclosure requirements of the Parliamentary Transparency Scheme should be at least as significant as those set out in the FITS Act; though consideration should be given to heavier penalties to reflect the primary responsibility of MPs and Senators to represent their constituents free from any undeclared relationship with a foreign government or foreign political organisation.

32. Offences under the FITS Act include undertaking registrable activities while not being registered under the scheme; failure to fulfil responsibilities (e.g. reporting and disclosure obligations) under the scheme; providing false or misleading information or documents in relation to an individual’s registration, and destroying records in connection with the scheme. The maximum penalties for these offences range from a fine of 60 penalty units to five years imprisonment, depending on the seriousness of the offence.

33. Section 44 of the Constitution (Disqualification) *inter alia* provides that “any person who ... has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer ... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.”

34. All offences arising from non-compliance with the Parliamentary Foreign Influence Transparency Scheme should carry a penalty of at least one-year imprisonment, thereby ensuring that the conviction of an MP or Senator for an offence arising from any non-compliance with the scheme will result in disqualification from the Parliament.

35. Any referral of an alleged offence to the Australian Federal Police should only be made with the consent of the Presiding Officer of the relevant chamber, and subject to a requirement that Presiding Officer inform that Chamber, whether consent has been given or not.

### **Transparency for State and Territory Parliamentarians**

36. I also note that, as mentioned above, Section 25A of the FITS Act includes an exemption for members of the Parliaments of the States and the Legislative Assemblies of the ACT and the Northern Territory. It would be inappropriate for the Federal Parliament to extend a Parliamentary Foreign Influence Transparency Scheme to cover the activities of State and Territory parliamentarians. The implementation of transparency arrangements at the State and Territory level is a matter for each of those jurisdictions. However,

given the importance of dealing with foreign influence and interference issues at all levels of Australia's federal system (and bearing in mind evidence that state parliamentarians and political organisations have received some attention from foreign governments and foreign political organisations), it would be appropriate to seek legal advice in relation to the possible amendment of Section 25A of the FITS Act to make the exemption for State and Territory parliamentarians conditional on each of the State and Territory parliaments enacting and implementing similar parliamentary transparency schemes. Alternatively appropriate action by the Parliaments of the States and Territories could be encouraged by inserting into the *FITS Act* a sunset clause, perhaps of twelve months duration after enactment of the Federal Parliament's Foreign Influence Transparency Scheme, applying to the state and territory parliamentary exemption. Again legal advice should be sought in relation to this option.

37. The question of transparency schemes for State and Territory parliamentarians is a matter that could be usefully taken up by the Speaker and the President with the presiding officers of the Parliaments of the States and Territories, but should also form part of the Committee's deliberations.

### **Concluding Observations**

38. I note this current inquiry is not listed on the Committee's webpage and there does not appear to be a public invitation for submissions. In view of the considerable public interest in the enactment of the Foreign Influence Transparency Scheme, I would urge the Committee to seek input as wide a range of experts, stakeholders and interested persons as possible. It is important that deliberations on a Parliamentary Foreign Influence Transparency Scheme be conducted in as transparent a manner as possible with ample opportunity for public input.

39. In conclusion I would urge the Senate Standing Committee on Privileges, in consultation with its counterpart committee in the House of Representatives, to give urgent consideration to this matter and work to expedite the introduction into the Parliament of a Bill to give effect to a robust Parliamentary Foreign Influence Transparency Scheme, at least an rigorous and extensive in its disclosure and transparency obligations as those applying to former Cabinet Ministers and recent designated position holders under the Foreign Influence Transparency Scheme; but preferably holding currently serving MPs and Senators to an even higher standard of transparency. Those transparency obligations should also cover the activities of MPs and Senators across a period of ten years prior to their entry into the Parliament (or for currently serving MPs and Senators, ten years prior to the commencement of the scheme).

40. Members of this Parliament enjoy a special status as elected representatives of the Australian people. With that status comes an equally

important obligation to ensure that all our activities, inside and outside the Parliament, are conducted with maximum transparency and without any undeclared conflict with the interests of our constituents and our nation as a whole.

41. The higher level of disclosure and transparency proposed in this submission is essential to give the Australian public confidence in the integrity of their Australian Parliament.

42. I urge the Standing Committee on Privileges to follow such a course in its inquiry and recommendations for a Parliamentary Foreign Influence Transparency Scheme.

43. Noting there is currently no web page associated with the Committee's Parliamentary Foreign Influence Transparency Scheme inquiry, and my strong views about the public importance of any future scheme, I intend to make this submission public.

**Senator Patrick**  
**Senator for South Australia**



**REX PATRICK**Centre Alliance  
Senator for South Australia

Senator Deborah O'Neill  
Chair, Senate Standing Committee on Privileges  
Parliament House  
CANBERRA ACT 2600

Dear Senator O'Neill

I refer to my submission of 12 October 2019 to the Senate Standing Committee on Privileges inquiry on the development of a Foreign Influence Transparency Scheme to apply to Parliamentarians.

In this letter I seek to draw attention to two further issues which the Committee will need to consider.

The first is the position of staff employed by Members of the House of Representatives and Senators in relation to the operation of a Parliamentary Foreign Influence Transparency Scheme.

Section 30 of the *Foreign Interference Transparency Scheme Act 2018* (the FITS Act) provides that a person is exempt from the provisions of the Act in relation to an activity the person undertakes on behalf of a foreign principal in the circumstances prescribed by the rules" made under section 71 of the Act.

Subsection 5(1) of the *Foreign Influence Transparency Scheme Rules 2018* (effective from 17 April 2019) provides that for the purposes of Section 30 of the FITS Act, a person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) the person:
  - (i) is employed under the *Members of Parliament (Staff) Act 1984*; or
  - (ii) is a consultant engaged under that Act; or
  - (iii) is a Commonwealth public official; and
- (b) undertaking the activity is within the scope of the functions that the person undertakes in the person's capacity as such a person; and

**Electorate Office**

Level 2, 31 Ebenezer Place  
Adelaide, South Australia 5000  
Phone: (08) 8232 1144  
Fax: (08) 8232 3744  
Email: [Senator.Patrick@aph.gov.au](mailto:Senator.Patrick@aph.gov.au)

**Parliament House**

Canberra, ACT 2600  
Phone: (02) 6277 3713  
Fax: (02) 6277 5834

- (c) at the time the activity is undertaken, the identity of the foreign principal is either apparent to all persons with whom the person is dealing or disclosed to them.

The effect of this rule is to exempt the staff of MPs and Senators from the scope of the FITS Act with regard to activities they undertake for a foreign principal as part of their work for a MP or Senator. This would appear to be consistent with the general exemption for parliamentarians established by Section 25A of the FITS Act, but equally makes it essential that the staff of MPs and Senators be subject to the Parliamentary Foreign Influence Transparency Scheme.

Leaving aside the ambiguity of this exception (for example it is not clear what the full scope of the “functions” of the staff employed by MPs and Senators might be), I would urge the Committee to give careful consideration to the inclusion of staff employed under the MOPS Act within the scope of the Parliamentary Transparency Scheme.

The work of the staff employed by MPs and Senators is inextricably linked to the parliamentary and political responsibilities of their employers and as such those staff should be subject to the same higher disclosure and transparency obligations as MPs and Senators. Exceptions to disclosure should be limited to those outlined in my submission.

Scheme information provided by MOPs Act employees would be most appropriately recorded in registers maintained by the Sergeant at Arms and the Usher of the Black Rod (as proposed in my submission).

The second issue that will need to be considered by the Committee is the coverage of Parliamentary staff under the Parliamentary Foreign influence Transparency Scheme.

As the Committee is aware the officers of Australian Parliamentary Service employed by the Department of the House of Representatives, the Department of the Senate and the Department of Parliamentary Services provide professional support, advice and facilities to each House of the Parliament, to parliamentary committees and to MPs and Senators, independently of the Executive Government of the Commonwealth.

Again, in the interests of transparency and consistency, it would be appropriate for all officers employed under the *Parliamentary Service Act 1999* to be subject to the same higher disclosure and transparency obligations as MPs and Senators. Exceptions to disclosure should be limited to those outlined in my submission.

Scheme information provided by staff of the Department of the House of Representatives and the Department of the Senate would be most appropriately recorded in registers maintained by the Sergeant at Arms and the Usher of the Black Rod respectively.

Scheme information provided by staff of the Department of Parliamentary Services would be most appropriately recorded in a register maintained by Secretary of that Department.

I would be grateful if the Committee could treat this letter as an addition to my submission of 12 October 2019.

Please advise me if you require any further clarification or information.

Yours sincerely

**REX PATRICK**  
25/10/19