

Foreign Influence Transparency Scheme Bill 2017.

I would like to thank the Parliamentary Joint Committee on Intelligence and Security (PJCIS) for the opportunity to comment on this Bill. At the outset I should note that the Australian Strategic Policy Institute (ASPI) does not take corporate positions on any issues. As such the opinions expressed here are my personal views.

My comments here should also be read in conjunction with my submission to the PJCIS inquiry into the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017. The legislation is closely related, is designed to address a common problem and in many cases requires similar Government handling in order to see the suite of Bills successfully implemented. I would like to make four recommendations to the Committee in relation to this Bill.

Public awareness and understanding

Based on my experience as a senior Defence official and subsequent work at ASPI, where I have followed the issue of foreign interference in Australian politics very closely, I have absolutely no doubt about the need for, and importance of, this legislation. However I think the Government and Parliament still face a substantial task to explain to the Australian people the underlying purpose of the legislation. This will also involve explaining the safeguards which have appropriately been put in place to support open political dialogue.

In my submission to the PJCIS on the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, I recommended the Committee direct the Australian Intelligence Community (AIC) to prepare an annual public report for Parliament on the state of efforts to counter-espionage, sabotage and foreign interference. This could become the basis for an annual Prime Ministerial statement to the Parliament and a debate that might usefully engage the attention of Members and Senators. I suggest that a Parliamentary-led public discussion on these issues would help to shape community understanding about the necessity of the Foreign Influence Transparency Scheme Bill 2017. The nature of counter-espionage is such that it is only the Government, drawing on the Australian Intelligence Community (AIC), which has the best sources of information about the nature of foreign interference. The AIC and Government should press hard to make as much of this information public as possible.

In the absence of a Government led debate, there is a risk that opponents of the Bill will seek to present it as threatening legitimate public comment and lobbying. My view is that this approach is mistaken and does not take the Bill's safeguards into account. The case against the Bill will most surely be made by those individuals who should disclose their connections to foreign entities. The Government and Parliament must ensure that a strong public case is made for the Bill and its subsequent careful implementation.

Former Ministers and senior officials

I support the requirements that the Bill establishes for former Parliamentary Ministers and senior officials to register if they are undertaking certain activities on behalf of foreign principals. My view is that insufficient safeguards have been put in place in the past, particularly with regard to Ministers, when it comes to employment after Ministerial careers. My recommendation is that the Committee should test whether more stringent requirements for employment after individuals leave and Government and senior public service positions, where those individuals have had access to highly classified information. This is particularly relevant where individuals may seek to draw on their experience in classified areas of government work in a commercial role afterwards. My view is that,

if individuals have had long term access to top secret national security information, then Government should severely restrict their capacity to work for foreign principals outside of the Five Eyes context. It ought not to be possible for a Minister or official to attend meetings of the National Security Committee of Cabinet one month and be working for foreign principals just months after leaving such privileged positions.

Foreign principals and foreign governments

Paragraph 254 of the Explanatory Memorandum says:

‘The scheme has intentionally been crafted so that a broader range of activities are considered to be registrable activities if undertaken on behalf of a foreign principal that is a foreign government, with fewer activities being considered to be registrable activities if undertaken on behalf of a foreign principal that is a foreign business or individual.’

The PJCIS should satisfy itself that the Bill does not create an artificial distinction between the actions of foreign Governments and foreign businesses, when in some cases the aims and objectives of these entities are closely interlinked. I notice, for example, that the Explanatory Memorandum (at paragraph 135) identified State Owned Enterprises as entities that are ‘controlled by foreign countries.’ It is just as important to understand that so-called private businesses operating in authoritarian systems, like the Chinese state-run economy, are potentially just as subject to state control when it comes to promoting national objectives in Australia or elsewhere.

Allied cooperation

Finally, as with my submission on the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, I recommend that the PJCIS reach out to counterpart Committees in the Parliaments of our Five Eyes allies, as well as Japan, Singapore, Germany and France. The committee will find their counterparts are dealing with similar policy challenges about how to enforce more transparent processes in situations where foreign interference in domestic political processes are on the rise. Liberal democracies should work more closely together to uncover patterns of political interference, to share information about suspect behaviour of individuals, countries and business entities, and to establish closer cooperation to help counter unwelcome and inappropriate political interference.

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