

**Government response:
Parliamentary Joint Committee on Intelligence and Security
Advisory Report on the
Foreign Influence Transparency Scheme Bill 2017**

(Report tabled 25 June 2018)

Recommendation	Response
<p>Recommendation 1</p> <p>The Committee recommends the implementation of the Attorney-General’s proposed amendments to remove from the definition of ‘foreign principal’ in section 10 of the Bill, the terms</p> <ul style="list-style-type: none"> • ‘foreign business’ • ‘foreign public entity’, and • ‘an individual who is neither an Australian citizen not a permanent Australian resident’. 	<p>Accepted.</p>
<p>Recommendation 2</p> <p>The Committee recommends implementation of the Attorney-General’s proposed amendments to introduce the term ‘foreign government related entity’ (as defined in those amendments) within the definition of a ‘foreign principal’ in section 10 of the Bill.</p> <p>The Committee further recommends the Explanatory Memorandum is amended to expressly set out that mere funding from a foreign government is not sufficient to satisfy the threshold requirements for the term’s application to companies.</p>	<p>Accepted.</p>
<p>Recommendation 3</p> <p>The Committee recommends that the Attorney-General’s proposed definition of a ‘foreign government related entity’ be further amended so as to include those entities where the directors or members of the executive committee are accustomed to act in accordance with the directions, instructions or wishes of a foreign government or a foreign political organisation, even if they are under no obligation to do so.</p>	<p>Accepted.</p>

Recommendation	Response
<p>Recommendation 4</p> <p>The Committee recommends the implementation of the Attorney-General’s proposed amendments to introduce the term ‘foreign government related individual’ (as defined in those amendments) within the definition of a ‘foreign principal’ in proposed section 10</p>	<p>Accepted.</p>
<p>Recommendation 5</p> <p>The Committee recommends that the Attorney-General’s proposed definition of a ‘foreign government related individual’ be further amended so as to include those individuals who are directors or members of an executive committee who are accustomed to act in accordance with the directions, instructions or wishes of a foreign government or a foreign political organisation, even if they are under no obligation to do so.</p>	<p>Accepted-in-principle.</p> <p>The definition of ‘foreign government related individual’ does not refer to directors or members of an executive committee. The definition has been amended to refer to individuals who are accustomed to acting in accordance with the directions, instructions or wishes of a foreign government, foreign political organisation or foreign government related entity.</p>
<p>Recommendation 6</p> <p>The Committee recommends that the Bill retain the current inclusive definition of a ‘foreign political organisation’ but be amended to provide that ‘foreign political organisation’ includes:</p> <ul style="list-style-type: none"> • a foreign political party, and • a foreign organisation that exists primarily to pursue political objectives. 	<p>Accepted.</p>
<p>Recommendation 7</p> <p>The Committee recommends implementation of the Attorney-General’s proposed amendments to remove, from the definition of ‘undertaking activity on behalf of a foreign principal’ in section 11 of the Bill, the terms</p> <ul style="list-style-type: none"> • ‘with funding or supervision by the foreign principal’, and • ‘in collaboration with the foreign principal’. 	<p>Accepted.</p>

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<p>Recommendation 8</p> <p>The Committee recommends that subsection 11(3) of the Bill be amended to provide that a person only undertakes an activity on behalf of a foreign principal <i>within the meaning of subsection 11(1)</i> if both the person and the foreign principal knew or expected that:</p> <ul style="list-style-type: none"> • the person would or might undertake the activity, and • the person would or might do so in circumstances falling within sections 20, 21, 22, 22 or 23 of the Bill (whether or not the parties expressly considered the existence of the scheme). 	Accepted.
<p>Recommendation 9</p> <p>The Committee recommends the implementation of the Attorney-General's proposed amendment to introduce new subsection 11(4) to the Bill.</p>	Accepted.
<p>Recommendation 10</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendments to proposed subsection 12(1) of the Bill, which require that the activity must be for the sole or primary purpose, or a substantial purpose, of influencing political or governmental processes.</p>	Accepted.
<p>Recommendation 11</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendments to section 13 of the Bill which provide that broadcasters, carriage service providers and publishers are not required to register, merely because they edit information or materials produced by a foreign principal.</p>	Accepted.
<p>Recommendation 12</p> <p>The Committee recommends that the Attorney-General's Department prepare and publish prior to the commencement of the Foreign Influence Transparency Scheme, detailed guidance material to assist online publishers and platforms with clarity as to their liability to register under the Scheme.</p>	Accepted.

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<p>Recommendation 13</p> <p>The Committee recommends that proposed section 14 of the Bill be amended to clarify that the <i>purpose of an activity</i> may be determined by having regard to the intent or belief of the person undertaking the activity and:</p> <ul style="list-style-type: none"> • the intention of any foreign principal on whose behalf the activity is undertaken, <u>or</u> • all of the circumstances in which the activity is undertaken. 	Accepted.
<p>Recommendation 14</p> <p>The Committee recommends the implementation of the Attorney-General's proposed amendments with regard to additional obligations for former Cabinet Ministers and recent designated position holders in section 22 and proposed section 23 of the Bill, with further amendments as follows:</p> <ul style="list-style-type: none"> • for a former Cabinet Minister, the time period of ten years should be removed altogether, such that these additional obligations would extend in perpetuity, and • fore recent designated position holders, the time period be amended from seven years to 15 years 	Accepted.
<p>Recommendation 15</p> <p>The Committee recommends that the Government consider amending the definition of 'recent designated position holder' in the Attorney-General's proposed amendments to include individuals employed under the <i>Members of Parliament (Staff) Act 1984</i> at the rank of Senior Adviser or above within the Ministry, so that the additional duties in section 23 (Registrable activities: recent designated position holders) apply to such people after they leave their employment.</p>	Accepted.
<p>Recommendation 16</p> <p>The Committee recommends that proposed section 22 (Registrable activities: former Cabinet Ministers) and 23 (Registrable activities: recent designated position holders) of the Bill be amended so that the individuals to whom those provisions apply cannot rely upon the exemptions in proposed section 29 (Exemption: government, commercial or business pursuits) to avoid what would otherwise be their registration obligations.</p>	Accepted.

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<p>Recommendation 17</p> <p>The Committee recommends implementation of the Attorney-General's proposed change to section 24 in the Bill.</p> <p>The Committee further recommends that the Explanatory Memorandum is revised to clarify the circumstances under which the humanitarian aid and assistance exemption applies. In particular, the Committee recommends the exemption should not be limited to responsive humanitarian aid or assistance, but rather capture preventative and long term humanitarian aid and assistance.</p>	Accepted.
<p>Recommendation 18</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendments to section 25 of the Bill, subject to the Government considering amending the section to also apply to activities that are 'incidental to' the matters currently listed in paragraphs (a) to (c).</p>	Accepted.
<p>Recommendation 19</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendment to section 27 (Exemption: religion) of the Bill, and that the Explanatory Memorandum be amended to reflect the Government's intention that religious institutions are exempt.</p>	Accepted.
<p>Recommendation 20</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendment to delete section 28 of the Bill.</p>	Accepted.
<p>Recommendation 21</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendments to section 29 of the Bill, with further amendments as follows:</p> <p style="padding-left: 40px;">that subsection 29(2) be amended so that the government, commercial or business pursuits exemption applies only where an individual's position as a director, officer or employee is obvious on the face of the otherwise registrable activity undertaken by the individual.</p>	Accepted.

Recommendation	Response
<p>Recommendation 22</p> <p>The Committee recommends that the Explanatory Memorandum be amended to clarify the intent of the amended section 29 of the Bill and the circumstances under which commercial and business pursuits would be exempt.</p>	Accepted.
<p>Recommendation 23</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendment to provide an exemption for industry representative bodies in section 29A of the Bill.</p> <p>The Committees the Government amend the Explanatory Memorandum to provide clarity to industry representative bodies as to what types of activities would be included and excluded under proposed section 29A(d) of the Bill.</p>	Accepted.
<p>Recommendation 24</p> <p>The Committee recommends implementation of the Attorney-General's proposed section 29B exemption for personal representation in relation to administrative process etc.</p>	Accepted.
<p>Recommendation 25</p> <p>The Committee recommends the Bill be amended to provide exemptions for charities, arts organisations and industrial associations, which would operate to relieve those organisations of an obligation to register when they are making routine representations in accordance with their respective purposes, and where the relationship with the foreign principal is well known or a matter of public record.</p>	Accepted.
<p>Recommendation 26</p> <p>The Committee recommends that the Bill be amended to provide a limited exemption for professions (such as tax agents, customs brokers and liquidators) where representations to government are parts of the normal day-to-day work of the people in that profession, and where the activity is such a regular day-to-day representation in the name of a foreign principal.</p>	Accepted
<p>Recommendation 27</p> <p>The Committee recommends the Bill be amended to clarify that the proposed exemptions provisions apply to both arrangements and activities.</p>	Accepted.

Recommendation	Response
<p>Recommendation 28</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendments to clarify the interaction of the Bill with parliamentary privilege, including by the insertion of a 'savings provision' in section 9A of the Bill and limiting the application of the Secretary's powers to obtain information or documents.</p> <p>However, the Committee recommends that subsection 9A(1) be prefaced with the words 'To avoid doubt'.</p>	<p>Accepted.</p>
<p>Recommendation 29</p> <p>The Committee recommends that the Bill be amended to provide that the Foreign Influence Transparency Scheme does not apply to members of the House or Representative (sic) or Senators.</p> <p>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.</p> <p>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</p> <ul style="list-style-type: none"> • 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. 	<p>Accepted to the extent that the recommendation relates to amending the Bill to provide that the Foreign Influence Transparency Scheme does not apply to members of either House of the Parliament.</p> <p>The remaining aspects of Recommendation 29 are a matter for the Houses of the Parliament.</p>
<p>Recommendation 30</p> <p>The Committee recommends that the review required under proposed section 70 of the Bill specifically consider the appropriateness of the reporting requirements in light of the experience garnered through the operation of the Scheme.</p>	<p>Accepted.</p> <p>Consistent with Recommendation 50, the review under section 70 will be undertaken by the Parliamentary Joint Committee on Intelligence and Security.</p>

Recommendation	Response
<p>Recommendation 31</p> <p>The Committee recommends that the rules should provide clarity about the disclosure requirements, and that the Government should consider the existing obligations contained under the <i>Commonwealth Electoral Act 1918</i> when developing these rules.</p>	Accepted.
<p>Recommendation 32</p> <p>The Committee recommends that the Attorney-General's Department prepare, and publish prior to the commencement of the Scheme, detailed guidance on the types of records that are required to be kept for the purpose of section 40 (Keeping records) of the Bill.</p>	Accepted.
<p>Recommendation 33</p> <p>The Committee recommends that section 40 of the Bill be amended to lower the period a person is required to retain records from five years to three years after registration ends, and that the Government consider an amendment that would provide that records of ten years or more are no longer required to be retained by a registered person.</p>	Accepted.
<p>Recommendation 34</p> <p>The Committee recommends that the Bill be amended to remove section 63, and the Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017, be withdrawn.</p>	Accepted.
<p>Recommendation 35</p> <p>The Committee recommends that, following the passage of this Bill, the Government introduce measures to:</p> <ul style="list-style-type: none"> • better align the Lobbying Code of Conduct and the Register of Lobbyists with the proposed Foreign Influence Transparency Scheme, and • amend the Lobbying Code of Conduct to provide an exemption for registration where a person is registered under the Foreign Influence Transparency Scheme. 	Accepted.
<p>Recommendation 36</p> <p>The Committee recommends that the Explanatory Memorandum be amended to provide clarity about the terms 'commercially sensitive' and 'national security'.</p>	Accepted.

Recommendation	Response
<p>Recommendation 37</p> <p>The Committee recommends that section 43 of the Bill be amended to require the Secretary to publish information listed in section 43 within a period of four weeks of receiving the information from a person liable to register under the Scheme.</p> <p>Further, the Committee recommends that for information provided during voting periods, as required under proposed section 36 and 37, the Secretary should be required to publish relevant information within 48 hours of its receipt.</p> <p>However, there should be a limited ability for the Secretary to take longer to publish information in circumstances where he or she is considering whether for one of the grounds for non-publication applies.</p>	Accepted.
<p>Recommendation 38</p> <p>The Committee recommends a Privacy Impact Assessment is undertaken at the earliest possible opportunity and prior to the commencement of the Scheme to ensure information both requested and shared by the Secretary is undertaken in compliance with an individual's right to privacy.</p>	Accepted.
<p>Recommendation 39</p> <p>The Committee recommends that the Bill be amended to clarify that the Secretary's powers cannot be used to compel evidence from a person in order to obtain evidence from that person that is then admissible in a prosecution of that person for an offence contained in the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017.</p>	Accepted
<p>Recommendation 40</p> <p>The Committee recommends section 53 of the Bill be amended to provide that any additional persons with whom, or purposes for which, Scheme information may be shared, be referred to the Parliamentary Joint Committee on Intelligence and Security for its review, and approval.</p>	Accepted.

Recommendation	Response
<p>Recommendation 41</p> <p>The Committee recommends implementation of the Attorney-General’s proposed amendments to section 67 of the Bill that limit the powers and functions that the Secretary may delegate.</p> <p>Further, the Committee recommends that section 67 be amended to provide that decisions by the Secretary under section 43 should not be delegated to an officer who is below the level of a Senior Executive Service officer.</p>	Accepted.
<p>Recommendation 42</p> <p>The Committee recommends that after an initial period of operation, the Government give consideration to the Scheme being administered by an independent statutory officer, as an alternative to it being administered by the Secretary of the Attorney-General’s Department.</p>	Accepted.
<p>Recommendation 43</p> <p>The Committee recommends implementation of the Attorney-General’s proposed amendments to the Bill which establish new Part 1, Division 3 – Transparency notices, subject to the following further amendments. The Committee recommends that the transparency notice framework as proposed by the Attorney-General be separated to include:</p> <ul style="list-style-type: none"> • a ‘provisional’ transparency notice, and • a ‘final’ transparency notice, and <p>the following technical amendments be implemented to:</p> <ul style="list-style-type: none"> • provide that the notice comes into force when it is made public, rather than when it is made, and • clarify what ‘details’ (mentioned in subsection 14C(1)) must be included in a notice. 	Accepted.
<p>Recommendation 44</p> <p>The Committee recommends that the Attorney-General’s proposed amendments for subsection 14B(2) of the Bill, not be implemented.</p>	Accepted.
<p>Recommendation 45</p> <p>The Committee recommends implementation of the Attorney-General’s proposed amendment to lower penalties under sections 57 and 57A of the Bill.</p>	Accepted.

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<p>Recommendation 46</p> <p>The Committee recommends that the Bill be amended to remove absolute liability from sections 57, 57A and 61.</p>	<p>Accepted.</p>
<p>Recommendation 47</p> <p>The Committee recommends that the Bill be amended to remove strict liability from section 58.</p>	<p>Accepted.</p>
<p>Recommendation 48</p> <p>The Committee recommends implementation of the Attorney-General's proposed amendments to</p> <ul style="list-style-type: none"> • lower the penalty in proposed section 60 of the Bill from five to three years • lower the penalty under proposed 61 – destruction etc. of records – from five years to three years, and • introduce section 61A – geographical jurisdiction of offences. 	<p>Accepted.</p> <p>The penalty for the offence at section 61 – destruction of records etc – is being reduced from three years to two years.</p>
<p>Recommendation 49</p> <p>The Committee recommends that section 69 of the Bill be amended to specify minimum requirements for inclusion in the annual report on the operation of the Scheme. These requirements should include:</p> <ul style="list-style-type: none"> • the numbers of new and ceased registrations, and reports provided to the Secretary, • the number of transparency notices issued, varied or revoked, • the number of written notices issued by the Secretary under sections 45 and 46, and the number of documents obtained by the Secretary as a result of section 46 notices, • the number of occasions a subject of a provisional transparency notice issued under Part 1 – Division 3 makes submissions to the Secretary, • a statement of compliance with the obligations under section 42 of the Act (register of scheme information) • the number of occasions on which Scheme information has been shared, including which agencies are obtaining Scheme information, • information on fees collected under the Scheme, and • any other matter prescribed by the rules for the purposes of the section. 	<p>Accepted.</p> <p>Provision has not been made for the annual report to provide information on fees collected under the Scheme as, consistent with Recommendation 34, fees will not be able to be charged.</p>

Recommendation	Response
<p>Recommendation 50</p> <p>The Committee recommends that section 70 of the Bill be amended to provide that the Parliamentary Joint Committee on Intelligence and Security initiate a review within three years of the commencement of the Scheme.</p>	Accepted.
<p>Recommendation 51</p> <p>The Committee recommends that the Parliamentary Joint Committee on Intelligence and Security is provided with reports by the administrator of the Scheme, as follows:</p> <ul style="list-style-type: none"> • a report detailing the Scheme’s implementation progress and strategy, to be provided to the Committee six months after Royal Assent of the Bill, or prior to the commencement of the Scheme, whichever occurs first, and • a report detailing the Scheme’s early operation to be provided to the Committee within 18 months of its commencement. <p>The administrator should be available to brief the Committee following the presentation of each report.</p>	Accepted.
<p>Recommendation 52</p> <p>Subject to implementation of the Committee’s recommendations, the Committee recommends that the Foreign Influence Transparency Scheme Bill 2017 be passed.</p>	Accepted.