

SECOND SUPPLEMENTARY SUBMISSION ON FITS – TONY KEVIN

My name is Anthony Kevin [REDACTED]

[REDACTED] I am a retired Australian senior diplomat, a lifetime Emeritus Fellow at the Australian National University, and an independent writer and speaker, mainly on Australian foreign policy issues. I am the author of a recent well-regarded non-fiction book on past and contemporary Russia, *'Return to Moscow'* (UWA Publishing, March 2017). I continue to write in online journals and on social media Facebook (as Tony Kevin) and Twitter (as @tonykevin), and engage in email correspondence with colleagues. I occasionally speak and broadcast as and when invited.

I have no issues with the proposed espionage legislation but I still do with the proposed Foreign Influence Transparency Scheme (FITS) legislation. This is my second supplementary written submission on the FITS Bill 2017. It responds to the recently published recommended amendments provided to the PJCIS by the Attorney-General, the Honourable Christian Porter. These amendments took into account the extensive public discussion since the Prime Minister announced in Parliament House on 4 December 2017 *'The biggest overhaul*

of espionage and intelligence laws in decades’ (ABC News Online, 5 December 2017)

<http://www.abc.net.au/news/2017-12-05/turnbull-announces-foreign-interference-laws/9227514>

I thank the PJCIS for its extensive work on this, and for allowing me the opportunity to take full part in its public consultations.

I am also familiar with some of the recent public statements by the Attorney-General and by some members of the PJCIS representing both major parties, in particular Mr Andrew Hastie and Mr Mark Dreyfus, on aspects of these proposed amendments.

My submission here should be read in conjunction with my two earlier submissions on the original bill and my subsequent appearance before the PJCIS in Melbourne. I do not intend to cover that ground again in detail.

Even after the welcome announced changes to the FITS bill that have won a measure of bipartisan support already, I still have some problems with the amended bill. I set these out hereunder, from a simple ‘first principles’ informed

Australian citizen's perspective, but without legal drafting knowledge.

May I make two important preambular comments.

First: I support the submissions previously made by the Australian Lawyers for Human Rights on these matters, and refer the Committee to ALHR's most recent submission which I understand reflects the continuing concerns that ALHR and other human rights and civil society organisations hold in relation to the 'foreign interference' legislative package, notwithstanding the proposed amendments.

Second: I was privileged to take part, and to learn much from, the 16 May 2018 public forum in Parliament House, Sydney 'Chinese Australians, Complexities and Challenges'. In that connection I have had the benefit of discussions with a Chinese communities' advocate and community organiser of moderate views, Kingsley Liu. I support the thrust of Kingsley Liu's expressed views pertaining to the bill's particular impact on the various Chinese Australian communities, which I understand to be on the following lines: that Chinese Australians have accepted Australia as their new country and seek integration as loyal Australians fully included in Australian society, under our nation's robust and widely supported multicultural policy. This policy framework of embracement, engagement and social cohesion offers the

strongest way to support Australia's national security and deal with any adverse foreign interference. Chinese Australian communities are most exposed and have an inherent problem over identity under the 'perpetual foreigner syndrome'. There will be confusion in Chinese Australian communities over which activities and relationships fall under this FITS legislation. Complexity of public discourse arises under these bills.

I originally expressed a preference for FITS to be set aside. I could see no advantage and potential disadvantage in trying to formulate new laws regulating the overt and declared conduct of a category of Australian citizens deemed to be 'agents of foreign influence'. I accept now that some modified form of the original FITS legislation will be passed, now that it has both major parties' support. In this context, I offer these supplementary views.

1. How fast and fundamentally the world security order is changing.

Australians cannot close our eyes and shut our ears to how quickly and fundamentally the world security order is changing, and how deeply these changes are impacting on Australia, if we want our country to remain secure and sovereign. A few on-line journals like John Menadue's '*Pearls and Irritations*' provide an influential and highly respected vehicle for robust debate among differing viewpoints on this crucial issue. For this, I thank John Menadue in his roles as editor and writer. Australia's national security policy elites and mainstream media have barely

begun to face the implications for Australia's national security and economic welfare of the accelerating changes in our global and regional security and economic environment,

These changes are happening far more quickly than our elites on both sides of mainstream politics and media realise, or are ready to confront. Only this week, we have seen:

- a major new diplomatic initiative aimed at US - North Korean rapprochement between Presidents Trump and Kim, supported by neighbouring governments South Korea, China and Russia, and accepted by Japan, after 70 years of the most bitter cold war;

- a G7 meeting in Canada that began and ended in unprecedented acrimony and disarray;

- a major Russian-Chinese summit meeting between Presidents Putin and Xi, whose mutual confidence is visibly strengthening, consolidating Chinese and Russian global power as major partners who know they have each other's backs;

- a meeting of the Council of Heads of State of the Shanghai Cooperation Organisation, expressing a vision of far-reaching international trade and payments changes, not based on the Euro-Atlantic alliance and the US \$-based world banking system;

- China's Belt and Road Initiative proceeds apace, creating infrastructure for a new Eurasian economic space stretching from China to the Indian and Arctic Oceans and Mediterranean Sea, and grouping together major former adversaries across this vast continental area.

As America's former power as custodian and guarantor of a rules-based global economic order diminishes relative to other

major powers, the world is urgently looking for new equitable organising principles for international security.

Meanwhile Washington is riven by deep disagreements on how the United States, Australia's major ally, should respond to these huge changes.

It is a time of great uncertainty, which represents both danger and opportunity for Australia's national security and economic welfare in years to come. Australian foreign policymakers and participants in this discussion need to stop seeing the world as made up of mostly 'good' countries (the Euro-Atlantic rules-based world order, underpinned by US military and economic power), confronting a few 'bad' countries out to disrupt this happy traditional status quo.

This former West-dominated world just does not exist anymore. It will not return. There are no 'good' or 'bad' international actors. There is only the constant need for responsible countries to support stable international institutions that respect and reconcile the interests of all sovereign states, large and small. We are far from that world now. How much is Australia doing to help nurture it? Are we still trapped in outmoded Cold War containment ideologies?

2. The need for a more efficient and open-minded Australian foreign policy debate, and how the FITS laws could constrain and impoverish this debate.

I do not want to see this essential Australian foreign policy debate constrained or impoverished by a well-founded fear - by persons who have good ideas to contribute but express non-conforming viewpoints, or by persons who might provide

publishing vehicles for such viewpoints, such as books, on-line journals or social media blogs - that they risk being captured by the FITS laws as agents of foreign influence. Australia needs for its own security to protect the free expression of contrarian foreign policy views, and free access by Australians to international security dialogues in different parts of the world – not just with traditional allies.

I have over the past year increasingly become aware of a more intolerant intellectual climate in Australia: of a fear of engaging with dissenting views, and of dissenters being cordoned off in closed communities as the mainstream dismisses them with pejorative labels like ‘contrarians, Putinists and instant experts’.

This can only damage our democracy and our national security climate in Australia.

The prospect of the present legislative package of tougher espionage and foreign interference laws was already being foreshadowed publicly by government sources in mid-2017. The dramatic and somewhat threatening way in which the Prime Minister introduced the new bills package on 4 December 2017 heightened my concerns. I felt the need to become directly engaged.

The threats to Australians’ rights to free expression and free international association under FITS have not gone away despite the helpful amendments made since 4 December 2017.

There is still more work to be done, in my opinion, in tightening the definitions of foreign principals under the FITS laws, and the nature of Australian citizens' contacts with them that would trigger the legal requirement for citizens to register as foreign agents.

3. The adverse impact of a register of foreign agents on persons so identified.

It has been claimed by the Prime Minister, 'If in doubt, register'. He has claimed reassuringly that there will be no reputational damage in so registering, that it is simply about being transparent if one has nothing improper to hide. I simply do not accept the accuracy of such assurances. If the proposed register were to be truly inclusive and non-discriminatory, it would have many hundreds of names on it, including many of the numerous published Australian writers on foreign policy issues who have extensive and regular professional contacts of various kinds with principals from the United States, UK and Israel, in correspondence, phonecalls and meetings with institutions and individuals that are in or close to government in those countries.

There should not be such extreme penalties proposed for failing to register as an agent of foreign influence. One is dealing with declarations of activities said not to be criminal in themselves, and the criminality is said to arise only in not registering.

It is not an offence nor should it be for Australians to seek in transparent, non-covert and non-corrupt ways to influence the

foreign policy of Australia. Nor should it ever be an offence for Australians to talk to foreigners from any country about Australian foreign policy ideas and issues, provided one does not violate official secrecy laws or enter into covert or corrupt relationships.

Yet everyone in Australia's political world knows that under this supposedly non-discriminatory FITS legislation, no active supporters of US, UK, or Israel's foreign policies will ever be charged under FITS with failing to register as foreign agents of influence. Any such potential links will simply not be investigated by the responsible agencies, no doubt on grounds that these countries are our friends, and that government resources have to be applied commensurate to perceived threats.

On the question of the register's discriminatory nature, which to me is absolutely crucial, I wish to recall from Hansard this relevant exchange with a Committee member in Melbourne on 16 March:

Senator McALLISTER: ... I think your assumption here is that the resources of government at present would be prioritised against individuals engaging with certain countries and not others. Would you like to talk about that a little? The basis of the legislation is, in fact, that it would apply equally to people interacting with all countries.

Mr KEVIN: Yes. My more detailed earlier submissions talk about this. I didn't have time to address it in my five-minute opening statement, but I'm part of a growing community of people interested in international relations who believe that we are moving into a different kind of world. It is a more multipolar, balanced world where

international security is no longer going to be set by a rules-based order pretty much determined by one country: the United States. We're moving more into a situation where there is going to have to be a process of bargaining, if you like—through the UN, hopefully—that will maintain international security, but in a multipolar framework. To me, that makes it incumbent on Australian scholars and commentators, like me, to make an effort to try to learn what the Chinese and the Russians, who are two major nuclear powers, think about the world order and the world balance. To me, it's important to do that. I don't want to be in a situation where I have to call myself an agent of foreign influence in order to safely pursue those sorts of inquiries and contacts. I just think that's not in the national interest. I've answered you indirectly, once again, but when one starts with a position of potentially criminalising contacts with nationals of a particular country, one's going down a very dangerous road.

Senator McALLISTER: The government has sought to distinguish between criminalising this activity and making it transparent—that is the rationale that's been presented by the Attorney-General's Department to this committee. It would say that there are no pejorative implications that flow from acting as an agent of a foreign country; it's merely a question of fact, it's not a normative judgement. Do you accept that explanation?

Mr KEVIN: No, I don't, and let me explain why. Senator Brandis, interestingly, compared it to the register of lobbyists. The register of lobbyists deals with maybe a few hundred individuals who have a specific professional task called 'lobbying'. It's an easy matter to draw up a register of those people, and it's not in any way pejorative towards them to put themselves on the register. What's being suggested in this legislation though is that people have to self-define whether they're an agent of foreign influence and, as I said in my opening remarks, it's quite impractical to think that the many, many thousands of people who have close contacts with organisations and individuals in the United States or the UK or Israel would consider themselves covered by this legislation. So you're already in a situation of discretion, which de facto singles out particular countries as being

under suspicion. I don't see any way around that, because if everybody who was potentially capturable for registration, if I can use that term, did so then there would be hundreds and thousands of people doing it.

`4.The effect of FITS on the continuing demonisation of two particular major powers, China and Russia.

Australia is following current UK and American models in operating increasingly in a security-agency dominated ideological universe where views of Russia and China are concerned. The process of demonisation is more advanced in the case of Russia, heightened by the continuing Mueller investigation of alleged Russian interference in the 2016 US election, recent Western allegations of chemical weapons use by Russia's ally the Syrian Government against rebel-held areas in Syria, and the unresolved Skripal Affair in the UK. I believe that the passage of FITS may worsen this climate in Australia. More and more, the Australian Government is behaving towards the Russian government in ways that lack normal respect as required under established laws and conventions of diplomatic relations. This is not in our national interest.

The process is less advanced in the case of China, where countervailing economic forces press for a modicum of continuing respect, but the danger signs are there also, as seen in some of the public discussion of this FITS legislation, which has been hurtful and distressing to many Chinese Australians.

5 . Conclusion – where I stand on FITS

I will continue to conduct my public life, social and travel activities, and political writing and speaking activities, according to the spirit and intent of this amended FITS law, as I interpret it. I will not be intimidated into curtailing what I have been openly saying and doing for several years in the Australian foreign policy arena in favour of Russia or China, because my recent past statements and writings have all been made of my own free will, and according to my informed judgment of Australia's security interests in a complex fast-changing world. Nothing I say or do has been done, or will be done, at the behest or on behalf of any foreign principal. I have never engaged, nor will I engage, in any clandestine or collusive activity with any foreign principal. I have never received, nor will I receive, inducements from any foreign principal to express any particular viewpoint on any Australian foreign policy issue. I will continue to express views and meet with people from any country that I choose, in Australia or outside it, according to my judgement of what contacts are interesting and useful for me to have as an informed responsible Australian citizen.

It follows that I will never register as an agent of any foreign principal under this draft legislation, nor will I, as far as is in my power, allow this legislation to inhibit my rights of lawful free expression and international association.

I urge other Australians of knowledge and good conscience to do the same. There are issues we need to talk about now as an informed national community, in the national interest. This necessary public dialogue must not be suppressed out of fear

of the FITS legislation now under final consideration by the PJCIS and Parliament.

Thank you.

Tony Kevin

14 June 2018, Canberra

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