

Parliamentary Joint Committee on Intelligence and Security
Review of the Foreign Influence Transparency Scheme Act 2018
Attorney-General's Department

Hearing date: 21 February 2023

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James Paterson asked the following question:

Senator PATERSON: That's what I wanted to get to. So the total number of people is 13. The full-time equivalent is 8.2. How many people are exclusively working on this—only on FITS and not on any other jobs?

Mr Reeve: Not on any other jobs, Senator? All staff will of course provide regular departmental coordination, briefing—

Senator PATERSON: Yes but their substantial role is what I'm—

Mr Reeve: I'd probably have to take that on notice, only because we've just gone through an internal restructure around responsibilities within that team, so I just want to make sure I've actually got the right numbers in terms of who is working in a dedicated fashion on it.

Senator PATERSON: Thank you—that's fine.

....

Senator PATERSON: Of those 13 people, how many have experience in investigations? How many of them have a professional background in investigations? You may need to take that on notice.

CHAIR: If you could, that would be good. Sorry, Senator Paterson. We're running out of time and our colleagues might want to get their questions in. Could you take that one on notice?

Mr Reeve: Certainly, Chair.

The response to the question is as follows:

A number of staff members work across both the Foreign Influence Transparency Scheme and the Lobbying Code of Conduct to achieve alignment in these frameworks, and to provide resilience and surge capacity for each framework. Currently, there are eight members of staff who primarily work on the Scheme.

One senior officer, who has responsibility for the leadership and management of complex casework under the Scheme, has a professional background in investigations. In addition to this, officers have a range of professional backgrounds and skills in relevant fields, including:

- foreign language proficiency
- the protection of national security information in proceedings
- international relations and security
- regulatory policy and operations, and
- legal policy expertise in transparency, integrity and national security.

Officers in the team working on complex casework receive a range of professional training, including on investigative methods. The department also collaborates with partner agencies in the administration of the Scheme, including:

- engaging regularly with the Counter-Foreign Interference Taskforce, the Department of Foreign Affairs and Trade, the Counter-Foreign Interference Coordination Centre, and other relevant departments and agencies, and
- as a member of the Electoral Integrity Assurance Taskforce, the Counter-Foreign Interference Executive Board, and the University Foreign Interference Taskforce.

These collaborative relationships enable the department to share and receive information relevant to the administration of the Scheme, including to inform our understanding of transparency risks and, in appropriate cases, the conduct of investigations.

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Josh Wilson asked the following question:

Mr JOSH WILSON: As Senator Paterson said earlier, former Prime Minister Turnbull and also Mr Joske strongly suggested that the FITS arrangements haven't been administered as expected, and Senator Paterson gave an example of that by referring to some particular organisations. As Senator Paterson said, there would have been a strong expectation over the last three or four years that those organisations would have been picked up and looked at under the FITS arrangement. To the extent that's put as a widely held and obvious view, including by members of the former government, was that something that was raised with the department by either of the former Attorney-Generals, Attorney-General Porter or Attorney-General Cash?

Mr Newnham: Look, based on a straw poll quickly with colleagues, I think that's the sort of question we would take on notice. It goes back some distance actually, as you would appreciate. I could certainly speak to some of the reasons why investigations don't result in registration or transparency notices, but I'm not sure if that provides an answer to your question.

....

Mr JOSH WILSON: None of us are, and I'm certainly not for a moment, impugning the work of anyone involved. My specific question is to try to see whether either of the former Attorneys-General communicated what seems to have been a strongly and commonly held view amongst members of the former government that this scheme wasn't being administered correctly—so if you wouldn't mind taking that on notice. It would be hard to reconcile some of the views that we've heard, both from the former Prime Minister and from some members of this committee, with that not occurring, and I'm interested to know if it did.

Mr Newnham: Indeed. Thank you,

The response to the question is as follows:

In late 2019 and early 2020, the then-Attorney-General, the Hon Christian Porter MP, advised the department of his expectation that the department's enforcement efforts in relation to the Foreign Influence Transparency Scheme (the Scheme) be focused on the most serious instances of non-compliance. The then-Attorney-General's comments were made in the context of the department writing to former Cabinet Ministers and recent designated position holders speaking at the 2019 Conservative Political Action Conference to advise that they may be liable to register under the Scheme, and were publicly reported on in late 2019.

Since then, the department has developed a compliance strategy which sets out its approach to compliance in a publicly available document, which is available on the department's website.

In particular, where the department becomes aware of cases where where a person may have obligations under the Scheme, the department adopts a risk-based approach in prioritising any engagement or enforcement action that may then be taken under the *Foreign Influence Transparency Scheme Act 2018* (FITS Act). The department's key considerations include:

- whether there is a lack of transparency, meaning there may be a relationship between a foreign principal and an entity or individual which is not clear to the public, and
- whether this lack of transparency poses a significant risk to government decision-making or public debate, for example, where an activity was intended to influence the decision or debate, or where the activity is part of a broader pattern or a systematic and sustained campaign.

Having reviewed relevant records, officers responsible for the administration of the Scheme are not otherwise aware of any concerns being raised by the former Attorneys-General, the Hon Christian Porter MP or Senator the Hon Michaelia Cash, regarding the department's administration of the Scheme.

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Josh Wilson asked the following question:

Mr Reeve: Mr Wilson, during the parliamentary process—I think Mr Hastie was on the committee at the time and so would recall—the then Attorney-General, Mr Porter, wrote to the committee with a set of proposed amendments. That was during the course of this committee's inquiry and review of then Foreign Influence Transparency Scheme Bill. The committee, as I recall, then considered those proposals and adopted recommendations as to whether those proposals should be accepted, amended or taken in a different direction.

Mr JOSH WILSON: So Attorney-General Porter essentially put propositions to the PJCIS. I wasn't a member at the time. The committee considered those and adopted them entirely or, as proposed by the Attorney-General, recommended that they be part of the narrowing of the legislation?

Mr Reeve: I'd probably have to take on notice the exact answer. My recollection is that the committee recommended adopting at least the majority of the proposals put forward by Mr Porter.

The response to the question is as follows:

In its advisory Report on the Foreign Influence Transparency Scheme Bill 2017 (FITS Bill), the PJCIS recommended implementing the majority of the former Attorney-General's proposed amendments but recommended further amendments to:

- the revised definition of 'foreign principal', such as by including additional limbs in the definitions of foreign government related entity and individual (recommendations 3 and 5)
- extend the period for which additional registration obligations apply to former Cabinet Ministers and recent designated position holders (recommendation 14)
- include staff employed at or above the level of Senior Advisor under the *Members of Parliament (Staff) Act 1984* in the definition of 'recent designated position holder' (recommendation 15)
- expand the exemption relating to legal advice and representation to activities that are also incidental to the provision of legal advice or representation (recommendation 18)
- limit the application of the government employee and commercial or business pursuits exemptions so they only apply where an individual's position as a director, officer or employee is obvious on the face of the activity (recommendation 21)
- preface the amendments clarifying the interaction of the FITS Bill with parliamentary privilege with the words 'to avoid doubt' (recommendation 28)
- prevent the Secretary delegating powers under section 43 to officers below the level of to Senior Executive Service officer (recommendation 41), and

- separate the proposed transparency notice regime to include provisional and final transparency notices, and to clarify what information must be included in a notice (recommendation 43).

The PJCIS recommended not implementing one of the former Attorney-General's proposed amendments. The former Attorney-General recommended the inclusion of provisions in the proposed transparency notice regime to clarify that:

- a person stated to be a foreign government related entity or individual in a transparency notice is taken to a foreign government related entity or individual, and
- in any proceedings under the Act, a transparency notice is taken to be *prima facie* evidence of the matters in the notice.

The PJCIS recommended those particular provisions not be included given there is a presumption that administrative decisions are valid. Recommendation 44 of the PJCIS Advisory Report on the FITS Bill provides further information on this proposal.

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Andrew Wallace asked the following question:

Mr WALLACE: Just quickly, I am not sure if you are aware that a week ago, on 14 February, Canada made an announcement in relation to grant funding for universities. Are you aware of that announcement they have made?

Mr Newnham: Vaguely. Can I just call on Mr Reeve to assist with your question.

Mr WALLACE: It's not a trick question. I'll just read out quickly: Grant applications that involve conducting research in a sensitive research area will not be funded if any of the researchers working on the project are affiliated with a university, research institute, or laboratory connected to the military, national defence, or state security entities of foreign state actors that pose a risk to our national security. This enhanced policy will be implemented rapidly and in close consultation with our departments ... Would you describe that as dealing with foreign interference or foreign influence more?

Mr Reeve: As I understand the announcement, I would say that probably relates more to the nature of the arrangements between the Canadian university or the Canadian researchers and counterparts. I think, depending on the actual activities that are then undertaken, you could probably go in either direction.

Mr WALLACE: What they are basically saying is that no funding will be provided to a university where anybody involved in that particular program has got any involvement with any military or any authoritarian organisation or government department. That's how I read it. Have we got anything like that?

Mr Newnham: I don't know that I can answer that.

Mr WALLACE: I'm happy for you to take it on notice.

Mr Newnham: Indeed we might. I want to be careful about the nature of the Canadian— exactly what was—

Mr WALLACE: That's fair enough. Can I get you to take that on notice—you are providing material to us— and just come back to us as to whether you think that is something that we should be looking at as well if we don't have an analogous arrangement.

The response to the question is as follows:

The Australian Government does not have a similar policy in place. However, the Australian Government takes a risk-based approach to research grants integrity. Australian Government departments that administer research grants programs have developed, and continue to refine, robust frameworks and processes to ensure that research grants are in Australia's national interests.

Grant agreements relating to research on sensitive topics may fall within scope of the Foreign Arrangements Scheme if they meet the definition of foreign arrangement under the Act – that is, a written arrangement, agreement, contract, understanding or undertaking between a State/Territory entity and a foreign entity. Foreign universities are included in the definition

of foreign entity under the Act where the university lacks institutional autonomy from the relevant foreign government. The Department of Foreign Affairs and Trade, which administers the Foreign Arrangements Scheme, screens and assesses notified arrangements and provides advice to the Minister where appropriate. The Minister retains the power to cancel, vary or refuse to approve negotiation/entry into any arrangement where it is, or is likely to be, inconsistent with Australia's foreign policy or adverse to Australia's foreign relations.

The Australian Government has also implemented a number of measures that seek to promote transparency, protect Australia's national interests and build resilience to foreign interference, in relation to the higher education and research sector. The University Foreign Interference Taskforce, for example, released the *Guidelines to counter foreign interference in the Australian university sector* in 2019. The Guidelines encourage universities to adopt measures to mitigate foreign interference risks that are appropriate to their individual risk profile. This includes encouraging universities to ask staff declaration of interest questions, as determined by universities, consistent with their assessment of the foreign interference risks they face.