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Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

Go8 Supplementary Submission to the Foreign Influence Transparency Scheme Bill 2017

The Go8 thanks the Parliamentary Joint Committee on Intelligence and Security (PJCS) for the opportunity to provide further input into its review of the proposed *Foreign Influence Transparency Scheme Bill 2017*, in line with our previous recommendation regarding the need for further consultation.

As noted in our previous submission and in the evidence given to the Committee by the Go8 during the hearing held on the 30th January 2018, the Go8 supports the need for measures to be taken to ensure adequate safeguards are in place to protect our national political and democratic processes.

However, we cannot achieve this aim without legislation that has been carefully crafted to perform its intended purpose while not causing unintended and unnecessary harm to the Australian organisations and individuals in carrying out their legitimate activities.

This submission is intended to supplement the evidence already provided by the Go8 to the Committee. It also provides clarification in response to issues raised during the Go8's appearance at the Committee hearing held on the 30th January 2018.

In summary, the Go8:

- Provides further evidence of the broad extent of the activities likely to be captured by the provisions of this Bill if allowed to proceed in its current form;
- Agrees with the acknowledgement by the Chair of the Committee of the need for nuance in the crafting of this legislation;
- Provides further evidence of the need to include an exemption to cover legitimate academic activities, in return for which we would be prepared to work with Government to review our internal policy frameworks to ensure they are up to date and fit for purpose with the current political environment;
- Provides clarification of the range of legislative and regulatory measures to which universities are already subject.

Extent of Registrable Activities



The Go8 has already noted that the broad scope of this Bill could potentially capture an extensive range of routine university activities that are not only legitimate, but bring benefit to the nation.

The brief two-week extension to the consultation period – though welcome – has not provided sufficient opportunity to conduct a thorough exploration of the full extent of the likely impact.

However, the following example is intended to provide some clarity to the Committee, noting that it is intended to be indicative only.

In 2017, Go8 universities produced around 23,736 publications involving an international author. This represented approximately 58% of all Go8 publications.

International research collaborations typically produce papers with higher citation rates than publications that do not involve international collaborations. This not only increases the potential global impact of those research findings, but also feeds directly into the calculation of prestigious international ranking systems such as the Academic Ranking of World Universities (ARWU),¹ the Times Higher Education World University Rankings,² and the QS World University Rankings.³ Australia's performance in these rankings impacts our global reputation for quality provision of both higher education and research services. Consequently, high quality co-authored papers bring a range of benefits to Australia over and above those conferred by the research findings themselves.

Publications are measures of research output, occurring at the end of the investigative process. The planning and execution of that research is likely to include multiple Go8 authors and many international engagements in addition to those necessary for the production of the final publication itself.

Then there are the interactions that do not result in publications. Since research is, by definition, "undertaken in order to increase the stock of knowledge",⁴ it is inevitable that not all projects will yield publishable results. Yet the connections that are made with compatible researchers during this process can lead to more fruitful projects further down the track.

Under the reporting scheme proposed in this Bill, it is our understanding that every one of the interactions involved in producing the 23,736 collaborative research papers will be captured by this Bill.

The Go8 provides this example to demonstrate to the Committee the volume of interactions likely to be registrable in one year and one institutional activity alone.

¹ <http://www.shanghairanking.com/ARWU-Methodology-2017.html>

² <https://www.timeshighereducation.com/world-university-rankings/methodology-world-university-rankings-2018>

³ <https://www.topuniversities.com/qs-world-university-rankings/methodology>

⁴ Glossary of key terms, *Frascati Manual*, <http://www.oecd.org/sti/inno/Frascati-2015-Glossary.pdf>



Clarification Regarding Section 11 of the Bill

In our previous submission, the Go8 argued that some of the activities captured under the definition of “on behalf of a foreign principal” in section 11 of the draft legislation could have the potential to restrict or prohibit research collaborations with international partners.

As noted in our submission, our comments referred specifically to the definitions provided in clauses (e) and (f), ie., relating to “funding or supervision” and “collaboration” with a foreign principal.

The Go8 does not object to the proposal to register activities that are being conducted “in the service of” (clause b), “on the order or at the request of” (clause c), or “under the control or direction of” (clause d) a foreign national. Nor do we object to the registration of activities as defined under section 20, ie., “parliamentary lobbying on behalf of a foreign government”. These appear to be reasonable measures aimed at increasing transparency.

However, we contend that there is a substantial difference between activities being undertaken “in the service of/under the control of/on the order of” a foreign principal, and those undertaken “in collaboration with”, or using co-funded or co-supervisory models.

Our previous submission contained a number of examples of research partnerships involving the latter, with collaborators ranging from DARPA (the United States Department of Defence research unit) to engineering giant Boeing.

Furthermore, universities are under a legislative obligation, through the *Higher Education Standards Framework (Threshold Standards) 2015*, to have a “clearly articulated higher education purpose that includes a commitment to and support for free intellectual inquiry in its academic endeavours”.⁵ This means that academics are unlikely to meet the requirements of their position unless they undertake “communications activity” as captured by the Bill. Unless an appropriate exemption is provided under Division 4, routine academic activities are likely to be caught through a combination of provisions included in this Bill, eg:

Section 11: Clause (a), (e), (f) – capturing collaborations, co-funding or co-supervision or any “arrangement”;

Section 12: Activities for the purpose of political or governmental influence, clauses (1) (b), (c), (d), or (2) influencing the public;

Section 13: Communications activity, which captures a broad range of activities; and

Section 14: purpose of activity, especially with its inclusion of clause (c), “all of the circumstances in which the activity is undertaken”.

⁵ https://www.legislation.gov.au/Details/F2015L01639/Html/Text#_Toc428368878



In the interests of brevity, we provided in our original submission an example of how a single scenario could trigger multiple clauses in this legislation. For convenience, we provide this example again below.

This issue can be demonstrated by way of the following scenario:

- (a) A research project is funded by (cl 11 of the Bill) a **foreign principal** (cl 10 of the Bill) which is either a **foreign business** (cl 10 of the Bill) or an individual who is neither an Australian citizen nor a permanent resident of Australia.
- (b) The research involves a matter which either may be the subject of a **federal government decision** (clauses 12(1)(b), 12(3) and 12(4) of the Bill) or may be a matter which is addressed by the **platform of a registered political party** (clauses 12(1)(d) and 12(3) of the Bill);
- (c) The researcher undertakes a **communication activity** (cl 13 of the Bill) in relation to that research; and
- (d) The researcher has a **belief** (cl 14 of the Bill) that that activity could affect either a federal government decision or the formulation of the platform of a registered political party.

In the above scenario, the researcher has engaged in a **registrable activity** (cl 21 of the Bill) under the proposed legislation and none of the currently proposed exemptions apply.

Clarification around the intent to capture interactions with “Five Eyes” Nations

This clarification is provided in response to comments made by the Chair of the JPCIS during Committee hearing on the 30th January 2018.

Hansard records the following exchange:⁶

CHAIR: I do not think the reputational risk is as significant when we consider our relationships with Five Eyes countries, for example, or Singapore, Germany or France, right? I don't think I'm being unfair to say that when we are talking about what this legislation might do to Australia and the university sector you could probably talk directly about the Asian market.

The Go8 has sought legal advice in preparing our response to this issue.

We have been advised that, while the Chair may have outlined the government's intent in developing the draft legislation, the Bill as it currently stands does not differentiate between foreign principals of different nations. Collaborations with *all* international partners, including those from Five Eyes countries, are captured by the current version of the Bill.

This could include a range of collaborations with world experts on areas of critical importance to Australia.

⁶
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Fcommjnt%2F9b46f71e-9b1b-408e-abe2-10ad1baece6d%2F0000%22>



Take, for example, the area of bushfire mitigation and management. Imagine that an Australian academic undertakes work in this field which is funded in full or in part by the State of California, a region also subject to serious bushfire risk. Imagine that academic delivers a paper at the National Party's annual conference at their invitation, which discusses the outcomes of that research. Despite the obvious benefit such an event could bring, that academic has engaged in activity that would be captured under this Bill.

Take another example. Emeritus Professor Simon Chapman at the University of Sydney is a globally recognised expert on tobacco control. He has served as an active member and consultant to the WHO, Australian government agencies and non-profits. In 2005, Professor Simon's NHMRC project (analysing over 40 million pages of previously internal tobacco industry documents) was acknowledged by the Health Minister as one of the 10 outstanding projects funded in recent years by the NHMRC. Professor Chapman was also heavily involved in social activism from the 1970s onward. Along with books, government reports and peer-reviewed papers with over 10,000 citations, he feels that some of his most influential writing has been in his newspaper opinion pieces and radio and television interviews. Of his media advocacy he says "I have tried to translate epidemiologists' conclusions into discourses that gel with community concerns". As Chapman states, "along with vaccine uptake, the fall in the road toll and arresting the HIV/AIDS epidemic, the fall in the smoking rate is one of the major public health achievements of the past 40 years." In 2013 Professor Chapman was made an Officer in the Order of Australia by the Australian Government. Yet, should any of the research that Emeritus Professor Chapman uses in his advocacy meet the broad criteria as outlined in Section 11 regarding association with a foreign principal, it would all become subject to the provisions outlined in this Bill.

The dilemma for Australian academics under this Bill is that, in the current climate, if a foreign principal supports a university activity in any way, there are likely to be perceptions of foreign influence if the activities of the university's academics are viewed as aligning with positions known to be supported by the foreign principal in question. Under the current provisions of the Bill, this could arise regardless of whether the topic in question is bushfire mitigation or significant public health policies, as outlined in the examples above.

The comments of the Chair of the PJCS, as recorded in Hansard, recognise the need for the final piece of legislation to be nuanced so as not to impede Australia in pursuing international links to our great benefit. It is for this reason that we are seeking an exemption for academic activities under Division 4 of the Bill.

Clarification Regarding the Need for an Academic Exemption

The Go8 notes the following comments by Committee Member Mr Julian Leeser MP, also recorded in Hansard:

It's more that you're seeking effectively a broad academic exemption here which I think is hard for us to give in a context where there is concern about interference by foreign organisations with units within universities to try and seek foreign policy outcomes that are not always aligned to Australia's national interests.

The Go8 acknowledges that the intent of the legislation is to capture activities potentially damaging to Australia's democratic processes from across a wide range of activities and sectors.



However, as outlined in the examples given throughout this supplementary submission, the legislation as currently drafted will capture a range of legitimate activities that occur to the benefit of Australia and Australians.

As stated above, we are pleased to note the recognition in the comments of the Committee Chair, Mr Andrew Hastie MP, of the need for some nuance in our approach.

It is for this reason that we are seeking an adequate academic exemption to ensure that Australia's high performing higher education and research sectors are enabled to continue legitimate, routine activities.

It is also for this reason that we do not believe that including a definition of "collaboration", as suggested by Mr Julian Leeser MP during the Committee hearings on the 30th January 2018, would provide sufficient protection for the range of important routine activities, such as those outlined in the various forms of evidence we have provided to this committee inquiry.

In our previous submission the Go8 suggested a possible definition of "academic purposes" that could be included as an exemption in the Bill.

However, we are happy to work with government on an alternative definition to ensure that it meets the needs of the sector while providing adequate protections for Australia's democratic processes.

In return, the Go8 would be prepared to work with Government to review our policy frameworks to ensure they are up to date and fit for purpose with the current environmental context.

Clarification Regarding the Status of Academics Providing Evidence to a Parliamentary Inquiry

During the Inquiry held on the 30th January 2018, the following question was asked of the university sector:

CHAIR: Just quickly on that example, before I hand over to Mr Leeser, would an academic providing evidence or a submission have to be registered?

The Go8 has sought legal advice regarding this issue.

We have been advised that academics appearing before or providing a submission to a Government or Senate inquiry would be captured by the provisions in the current drafting of the Bill, if the activity:

- Is undertaken "on behalf of" a foreign principal as outlined in Section 11;
- Is for a political or governmental influence purpose (Section 12, especially 12(1)(b)(c) or (d), Clause 14);
- or
- Is a "communication activity" as defined by Clause 13.

Clarification regarding the issue of "Ethical" versus "National Interest"

Hansard for the Committee hearing held on the 30th January 2018 recorded the following:

Senator FAWCETT: You used the word 'ethical'. We're coming at this from a sovereignty and national security perspective. There are questions of the national interest. Somebody's conduct



in the national interest may be quite ethical, but the question is raised: is it in our national interest? Is that part of your assessment framework?

The Go8 believes it would be helpful to clarify for the committee the range of legislative and regulatory measures that govern university activities.

Some measures are Federal, while others occur at State level, meaning that some variation will occur depending on where an institution is located. However, some of these measures include:

Federal

- *Defence Trade Controls Act*: controls the transfer of defence and strategic goods and technologies and bringing Australia into line with international best practice.
- The *TEQSA Act* and *Higher Education Standards Framework (Threshold Standards)*: provides the regulatory standards governing higher education provision in Australia.
- *Higher Education Support Act*: includes sections around academic freedom, and accountability and quality.
- *Autonomous Sanctions Act* and associated regulations: includes a risk assessment of the proposed activities of researchers or research students from a listed, sanctioned country before they arrive in Australia.
- Australian immigration and visa framework: governs the conditions under which foreign students, visitors and academics can live and work in Australia.
- *Education Services for Overseas Students (ESOS) Act* and relevant sections of the *National Code of Practice for Providers of Education and Training to Overseas Students*: the ESOS Act sets out the legal framework governing delivery of education to international students in Australia. The National Code provides nationally consistent standards for the conduct of registered providers and the registration of their courses.
- *Charities and Not for Profit Commission Act*: imposes annual reporting and regulatory powers over universities as registered charities.
- *Freedom of Information Act 1982*: An Act to give to members of the public rights of access to official documents of the Government of the Commonwealth and of its agencies.
- Regulatory requirements associated with grants awarded by federal funding bodies such as the Australian Research Council (ARC) and the National Health and Medical Research Council (NHMRC).
- Compliance with codes of practice such as the Australian Code for the Responsible Conduct of Research, the ARC Research Integrity and Research Misconduct Policy, and the National Principles of Intellectual Property Management for Publicly Funded Research.

State:

State level legislative and regulatory requirements may vary across Australia. However, such requirements may include:



- University Acts: these are generally created at the state level and set out each university's objectives, purpose, mission and governance regulations.
- Finance and Accountability Acts: for example, the NSW Finance and Accountability Act requires annual audits and reporting to the NSW government, and regularly makes recommendations on matters of transparency and probity.
- NSW Government Information (Public Access) Act: applies in the state of NSW. Provides extensive Freedom of Information (FOI) rights for the public in relation to the activities of NSW universities as statutory entities.

Institutional Policies and Frameworks

Individual universities also put in place a range of internal measures designed to control for and manage risk. These might include:

- Establishment of appropriate ethics committees to regulate research projects;
- Determining appropriate terms for any commercial and/or legal agreements with collaborative partners;
- Maintaining robust IT security systems and campus security systems.
- Conducting due diligence when entering research, academic or commercial arrangements with external partners.
- Regulation by University Senates and Boards.
- Staff Codes of Conduct, which governing the behaviour of staff. At the University of Sydney the Code of Conduct includes a specific prohibition on the use of university funds for political donations.
- Risk Management Frameworks.

The University of Sydney also has in place a Gift Acceptance Policy with associated processes. These set out the principles under which gifts can be accepted (such as providing no material benefit to the donor), and the processes which must be undertaken when considering the acceptability of a gift.

As noted above, in return for an academic exemption within the Bill, the Go8 would be prepared to work with Government to review our internal policy frameworks to ensure they are up to date and fit for purpose with the current political environment.

Yours sincerely

VICKI THOMSON
CHIEF EXECUTIVE