APGRA
Australian Professional Government Relations Association

15 June 2018

The Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
Parliament House
Canberra ACT 2600
By email: pjcis@aph.gov.au

Dear Sir/Madam

Inquiry into Foreign Influence Transparency (FIT) Scheme Bill 2017

The Australian Professional Government Relations Association (APGRA) welcomes the opportunity to provide a brief supplementary submission to the Parliamentary Joint Committee on Intelligence and Security on its Inquiry into the FIT Scheme Bill. This letter follows our initial submission to the Committee (dated 22 January 2018).

APGRA was established in 2014 by a number of longstanding public affairs consulting firms and senior practitioners to promote ethical standards, greater transparency and a binding Code of Conduct applicable to all members conducting government relations activity. Further information on APGRA can be found at www.apgra.com.au.

We acknowledge the Attorney-General's recently proposed amendments to the FIT Scheme Bill, and recognise the significant improvement these amendments will make to the Scheme's practical operation. However, APGRA has identified certain outstanding issues which we believe may inhibit the Bill's successful implementation and operation, or which require further clarification. These key concerns are outlined below.

Key Concerns and Proposed Solutions

1. 'Commercial or business pursuits' exemption

Under Part 2, Division 4, of the Bill sets out various exemptions to registration under the Scheme. It exempts activities from the Scheme where the person is employed by, or operating 'under the name of', a foreign government related entity where that activity is a commercial or business pursuit.

While important and necessary, we believe this exemption lacks clarity as to the circumstance in which it would apply. It appears clear that it would apply where the activity relates to a contract for the provision of goods or services (although it would be useful to confirm this). It is unclear, however, whether the exemption would apply to activities relating to a regulatory approval relevant to a commercial transaction or project. Similarly, where change is sought to legislation or public policy in pursuit of the bona fide commercial or business objectives of the foreign government related entity.

2. Information to be publicly disclosed under the Scheme

Part 4, Division 2 of the Bill sets out the arrangements for the register of Scheme information. It sets out the information provided by registered parties that will be made publicly available by the

Secretary including the name of the person and the foreign principal, a description of the kind of registrable activities undertaken by the person and 'any other information prescribed by the Rules'.

APGRA is seeking further clarification on what details of registrable activities will be required under the Scheme. We submit that the broad publication of any information beyond the name of the parties and a general descriptor of the type of activity undertaken is not required from a public interest perspective and would serve to prejudice the legitimate interests of a foreign government related entity and their professional advisers.

As outlined in our previous submission to the Committee, the Federal Government's Lobbying Code of Conduct and associated Register of Lobbyists have operated effectively over the past decade to achieve high levels of compliance and ensure public expectations of transparency, integrity and honesty are met. Details on companies and persons undertaking lobbying activities are listed on the Register – such as trading names and business registration details; the names and titles of those employed by a firm; and regular confirmations of registration – together with the names of all clients on whose behalf the firm conducts registrable activities.

APGRA submits that the information to be disclosed under the Scheme should be limited to details disclosed under the Lobbying Code of Conduct, a system that is currently working well. In the alternative, should it be determined that the Scheme requires some further disclosure of activity details, this should be limited to pre-determined categories which could include: 'Introduction'; 'Making an amendment of legislation'; 'Development or amendment of government policy or program'; and 'Communication activity'.

3. Definition of 'foreign government related entity'

A new definition of 'foreign government related entity' has been proposed that would set out thresholds for the inclusion of relevant organisations within this concept based on ownership, voting power, appointment of directors etc. Exceeding any of these thresholds would mean the entity is covered by the Scheme.

APGRA seeks clarification of the status of foreign pension funds under this definition, particularly those originally established through legislation by a national or provincial government (common in Canada in particular) and does not believe these should be categorised as foreign government related entities. These foreign pension funds are neither sovereign wealth funds or state-owned enterprises, and their charters make clear that their investment mandates are independent of government and in no way subject to government direction.

4. Trigger for registration under the Scheme

Part 2, Division 2 provides that a person who becomes liable to register under the Scheme in relation to a foreign principal must do so within 14 days after becoming liable. It states that the person becomes liable either when they undertake a relevant activity, or on entering a registrable arrangement with a foreign principal.

As noted in our earlier submission, the APGRA submits that it is only the undertaking of a relevant activity that should be the basis of registration, rather than merely entering into an arrangement. It is unclear as to why registration would be required at the point of entering an advisory engagement, as opposed to commencement of the actual activity that is material from a public interest perspective.

We submit that registration should only be required from the point at which relevant activity begins, rather than when advisory arrangements commence.

5. Disproportionate penalties

Under Part 5 of the Bill, a failure to comply with various obligations will incur criminal penalties, with some offences involving significant terms of imprisonment.

We acknowledge the Attorney-General's proposal to reduce maximum penalties for certain criminal offences included in the Bill, as well as the inclusion of intention-based elements for these offences. APGRA nonetheless believes there are real questions of proportionality raised by the specification of significant imprisonment terms for failures to comply under the Scheme.

We continue to hold that the Bill be amended to impose appropriate civil penalties for the offences included.

6. Compliance updates

APGRA's final point of concern relates to the reporting/disclosure and compliance arrangements under the Scheme.

Registrant reporting obligations are set out under Part 3, Divisions 2 and 3 of the Bill. We submit that the requirement to update registration details on a per-client, or per-activity/arrangement, basis is impractical. Instead, we suggest that updates should be required once per quarter by a professional adviser for all client activity or advice, representing a more reasonable compliance burden.

We continue to have a concern as to the extent of the record keeping obligations under Part 3, Division 3 of the Bill, specifically the requirement to retain for five years details of all registrable activities undertaken on behalf of a foreign principal. Many of our consulting members are single person operators or small firms for whom this would represent a substantial compliance burden.

We would be pleased to further assist the Committee with its examination of the FIT Scheme Bill. Please do not hesitate to contact me [redacted]

Yours sincerely

[signed]

Les Timar
President
(CEO & Founding Partner of GRACosway)