

Monday, 11 June 2018

Progress in foreign influence legislation acknowledged, yet concerns remain

The Law Council acknowledges the Australian Government's proposed amendments to the [Foreign Influence Transparency Scheme Bill \(FITS Bill\)](#) addresses some of the significant concerns raised by the Law Council and others, yet requires further changes before passage through the Parliament.

Law Council President, Morry Bailes, said the original Bill had the potential to create a chilling effect on public policy dialogue, due to the potential legislative over-reach of the scheme, the ambiguity of its key terms, and the significant penalties attached to non-compliance.

"The Law Council is pleased that the Attorney-General intends to introduce amendments seeking to limit who would be considered to be a foreign principal, narrowing the instances where a person will be taken to be acting under the influence of a foreign principal and broadening the exemptions from registration," Mr Bailes said.

Mr Bailes said while further amendments would be required, which the Law Council will explore fully in a subsequent submission, it is the Law Council's preliminary view the latest amendments amount to a significant improvement of the Bill, including its impact on freedom of speech.

"The Law Council particularly welcomes a broadening of the exemption for the provision of legal advice beyond just representation in proceedings, including in relation to the administrative processes of government," Mr Bailes said.

"Protections for parliamentary and legal professional privilege are also positive.

"Nonetheless, we need to consider the amendments in closer detail to determine how they fit with other legislation currently before Parliament, and to ensure consistency with fundamental rule of law principles."

The Law Council intends to provide a supplementary submission to the Parliamentary Joint Committee on Intelligence and Security in relation to the FITS Bill which will carefully examine the:

- impact on charities and the not-for-profit sector;
- new foreign principal category of a 'foreign government related entity';
- proposed new transparency notice scheme for which procedural fairness is not required to be observed; and
- proposed introduction of an absolute liability element for certain criminal offence provisions.

The Law Council would welcome the opportunity to work through these outstanding concerns with Australian Government and the Parliament on the Bill.

Sonia Byrnes: Communications
P 0437 078 850
E Sonia.Byrnes@lawcouncil.asn.au

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