



**Submission to:**

**Parliamentary Joint Committee on Intelligence and Security**

**Supplementary Submission on  
the Foreign Influence Transparency Scheme  
Bill 2017**

**June 2018**

## Introduction

This brief supplementary submission should be read in conjunction with the previous Community Council for Australia submission (attached) and the verbal evidence previously given by the Community Council for Australia (CCA) in relation to the negative impact of the proposed Foreign Influence Transparency Scheme Bill 2017 (the Bill) on many Australian charities.

While CCA appreciates this opportunity to provide a supplementary submission, the very tight timelines and lack of a new explanatory memorandum to the proposed amendments have made consultation and serious analysis somewhat difficult.

In general, CCA welcome the proposed amendments, but remains uncertain about the impact on some members, and confused as to why charities pursuing their charitable purpose are not excluded when business groups, non-charitable peak bodies and others are exempt.

This submission includes a brief background on the Community Council for Australia, an outline of the CCA position in relation to the government's description of five key areas where amendments have been made, and a listing of concerns that remain when the proposed amendments are taken into consideration.

Further background on CCA membership, the current state of the charities sector, and the importance of advocacy in pursuing charitable purpose are outlined in the previous CCA submission (attached).

## The Community Council for Australia

The Community Council for Australia is an independent non-political member-based organisation dedicated to building flourishing communities by enhancing the extraordinary work undertaken by the charities and not-for-profit sector in Australia. CCA seeks to change the way governments, communities and not-for-profits relate to one another. It does so by providing a national voice and facilitation for sector leaders to act on common and shared issues affecting the contribution, performance and viability of NFPs in Australia. This includes:

- promoting the values of the sector and the need for reform
- influencing and shaping relevant policy agendas
- improving the way people invest in the sector
- measuring and reporting success in a way that clearly articulates value
- building collaboration and sector efficiency
- informing, educating, and assisting organisations in the sector to deal with change and build sustainable futures
- providing a catalyst and mechanism for the sector to work in partnership with government, business and the broader Australian community to achieve positive change.

Our success will drive a more sustainable and effective charities and not-for-profit sector in Australia making an increased contribution to the well-being and resilience of all our communities.

## **The proposed amendments – the broad intention and CCA reaction**

The following listing of five key areas where the FITS Bill has been amended have been copied from the media release on the 8<sup>th</sup> of June in which the Attorney-General Christian Porter outlined the intended purpose of proposed amendments.

*1. Limiting the foreign principals (where acting on behalf of the foreign principal would require registration) to foreign governments, foreign government related entities, foreign political organisations and foreign government-related individuals. This ensures that only organisations or individuals ultimately working at the direction of a foreign government or political party are required to register.*

*Under these amendments the vast majority of private international companies would not be considered foreign principals unless it can be shown they are closely related to a foreign government or political organisation.*

**CCA welcome the intention in the amendments to restrict the definition of foreign principals. A narrower definition will limit the number of charities at risk of acting on behalf of foreign principals. It remains unclear whether the amendments may mean foreign principals could encompass organisations such as the World Health Organisation, the United Nations or other non-government entities.**

*2. The definition of ‘communications activity’ would be enhanced, so that broadcasters, carriage service providers and publishers would not be required to register under the scheme where they are undertaking their ordinary business—that is, where they are simply broadcasting, transmitting or publishing content overtly on behalf of the newly defined, narrower set of foreign principals.*

**CCA welcome this intention in the amendments, particularly for community-based broadcasters and publishers.**

*3. The definition of ‘activity for the purpose of political or government influence’ would also be amended so that a substantial purpose of the activity has to be political influence, rather than just ‘a’ purpose of it.*

**CCA welcome this intention in the amendments but is concerned about what the term political influence may encompass.**

*4. In response to suggestions from the university sector and charities we would amend the definition of ‘undertaking activity on behalf of a foreign principal’ so that a person isn’t deemed to be undertaking an activity merely because they are supervised by, receive funding from or collaborate with a foreign principal.*

**CCA welcome this intention in the amendments, but again remains unclear about how the new definition of ‘on behalf of’ will be enacted.**

*5. A new power would be created that allows the Secretary of the Attorney-General’s Department to issue transparency notices stating that a person or organisation is considered a foreign government related entity or individual for the purposes of the scheme. This would allow the Government to investigate and declare where it considers companies or individuals are hiding their connections to foreign governments.*

**CCA is unclear about how this new power might be applied to charities.**

## **Proposed amendments – key issues for charities**

The following key issues remain of concern to CCA.

### **Why not exclude charities that are clearly not directed by a foreign government?**

The new amendments provide exemptions for industry bodies, lawyers and businesses, but not charities.

In practice, if a foreign principal - say the United Nations – provided funding for the Business Council of Australia to promote Australian community and government support for their Sustainable Development Goals, as an industry body the BCA would be exempt even if they were publicly advocating for changes in government policy. If the same funding was given to CCA for the same purpose, CCA as a peak body for charities is not excluded and would probably have to register as acting on behalf of a foreign agent.

There are no restrictions on the activities the BCA can engage in to influence the political process. They can make donations, support political parties, provide how to vote cards, and offer financial and other support to candidates. As a charity, CCA can engage in none of these activities and must complete annual returns to a regulator with details of income, responsible people involved, etc. etc.

Given how regulated charities are compared to business and industry bodies, this lack of an exclusion seems to make no sense. Surely it is possible to craft a form of exclusion for Australian registered charities engaged in their approved charitable activities (including advocacy to government) to be excluded from the need to register provided they are clearly not directed by a foreign government.

### **Uncertainty in what is captured by important terms such as ‘political influence’**

While the details of the Bill and explanatory memorandum are still yet to be finalised, the lack of clarity about terms in the Bill and how they will be applied creates a significant level of uncertainty for some charities.

For instance, the notion of charities exerting what is described as ‘*political influence*’ is unclear. If a charity is advocating for their community or their purpose, when is that activity deemed to be exerting political influence? For example: a homelessness peak body may have received funds from international bodies including the United Nations to support their work in seeking more government investment in public housing. Are they exerting political influence when they make submissions to government, make public statements, release public reports, campaign for changes in national policies, seek to influence the views of political campaigners, seek to influence the views of senior government officials, seek to influence the views of political parties? How do they know what is permissible? Do charities with international funding need to get legal advice on their advocacy activities if they are funded by international bodies or entities that receive significant government funding or are associated with international governments?

There is also a lack of clarity about when a charity may be acting ‘*on behalf of*’ or ‘*at the request of*’. Receiving funding from a foreign principal to be used in a certain way will probably mean the charity will be acting ‘at the request of’?

CCA contends that if an Australian charity is engaged in approved activities to achieve its approved charitable purpose, it is almost certainly not being directed by a foreign principal and should be excluded.

## Chilling impact

International studies have repeatedly demonstrated that creating uncertainty and new regulatory requirements for charities engaged in public advocacy has a chilling impact. With the current FITS Bill, the concern is that there will be less international collaboration with any international government related organisation, and less advocacy by charities for their charitable purpose. For example:

If an animal welfare organisation uses information from an international government backed laboratory to argue for a reduction in testing of cosmetics on animals in Australia, do they have to register?

If a performance arts group engages in joint productions with an international company backed by an international government, and part of their agreement is to try and increase Australian government funding of performance art productions, do they have to register?

The answer in both cases may be that there is no need to register, but the mere fact that it is a question that needs to be answered, a risk that needs to be attended to, means some charities will avoid engaging in both international collaborations and advocacy. This would be a very negative outcome for Australia.

## Conclusion

CCA welcome the proposed amendments. There is no doubt that most charities will no longer face the risk of having to register as foreign agents, and many of the anomalies created by poor drafting and broad terminology have been addressed. CCA appreciates that the government and all involved have listened and been prepared to amend the proposed Bill to address many of the concerns of the charitable sector.

CCA also notes that the exclusions given to peak industry bodies and businesses have not been provided to peak charity bodies and charities. Charities face real and enforceable restrictions on their capacity to participate in political activities, restrictions that business and industry peak bodies do not have to comply with. CCA does not believe charities pose such a risk to national security that they should be identified as a higher risk than businesses or industry peak bodies.

CCA has no issue with any charity that is being controlled and directed by a foreign government having to be transparent about their funding and their activities, including having to be on a register. CCA believes it is important to narrow down the terminology in the Bill and the associated explanatory memorandum to ensure it is only charities acting directly on behalf of a foreign government outside of their normal activities and seeking to exert direct influence on government policy that are captured by the Bill.

There remain areas of uncertainty around the definitions of terms like: *foreign principal* - is the World Health Organisation which is largely funded by the US government a foreign principal; *political influence* - is giving a public talk calling for more government spending in a particular area defined as exerting political influence; *on behalf of* - is a charity that receives funding from the United Nations to pursue its charitable purpose acting as a foreign agent.

It is very important that the uncertainty is resolved. Most charities will do anything to avoid having to declare themselves as foreign agents, including not engaging internationally and not advocating for their charitable purpose. The cost to Australia of reducing international collaboration by charities and their engagement in the public policy process would be extremely high. Ideally the Bill will exclude Australian registered charities engaged in their normal activities and pursuing their legitimate charitable purpose, even if they have engaged in international collaboration.

## **Current Membership – Community Council for Australia *Attachment A***

**Access Australia's National Infertility Network**

**Access Housing**

**Adult Learning Australia**

**Alcohol, Tobacco and Other Drugs Association ACT**

**Arab Council Australia**

**Australian Charities Fund**

**Australian Community Support Organisation (ACSO)**

**Australian Council for International Development, Marc Purcell, CEO (CCA Board Director)**

**Australian Indigenous Leadership Centre**

**Australian Institute of Superannuation Trustees**

**Australian Major Performing Arts Group**

**Australian Research Alliance for Children and Youth**

**Australian Women Donors Network**

**Business Council of Cooperatives and Mutuals**

**Carers Australia**

**Centre for Social Impact**

**Church Communities Australia**

**Churches of Christ Vic and Tas**

**Community Based Support (Tas)**

**Community Broadcasting Association of Australia**

**Community Colleges Australia**

**Connecting Up**

**Drug Arm Australasia, Dennis Young, CEO**

**Ethical Jobs**

**Everyman**

**Foresters Community Finance**

**Foundation for Alcohol Research and Education**

**Foundation for Young Australians**

**Fragile X Association of Australia**

**Fundraising Institute of Australia**

**Good Samaritan Foundation**

**Good to Give**

**Hammondcare**

**Hillsong Church, George Aghajanian, CEO (CCA Board Director)**

**Justice Connect**

Life Without Barriers, Claire Robbs, CEO (CCA Board Director)  
Lock the Gate  
Mater Foundation  
Menslink  
Mission Australia  
Missions Interlink  
Musica Viva Australia, Mary Jo Capps, CEO (CCA Board Director)  
Non Profit Alliance  
Our Community  
OzHarvest  
Painaustralia  
Palliative Care Australia  
Philanthropy Australia  
Playgroup Qld  
Port Phillip Housing Association  
Power Housing Australia  
Pro Bono Australia  
Queensland Water & Land Carers  
RSPCA Australia, Heather Neil, CEO (CCA Board Director)  
SANE  
SARRAH  
Save the Children, Paul Ronalds, CEO (CCA Board Director)  
Settlement Services International  
Smith Family, Lisa O'Brien, CEO (CCA Board Director)  
Social Ventures Australia  
St John Ambulance  
Starlight Foundation  
Ted Noffs Foundation  
Touched by Olivia  
Variety Australia  
Veterans Off the Streets Australia  
Volunteering Australia  
Wesley Mission, Keith Garner, CEO (CCA Board Director)  
White Ribbon Australia, Libby Davies (CCA Board Director)  
World Vision, Tim Costello, Chief Advocate (Chair CCA Board)  
World Wide Fund for Nature Australia  
YMCA Australia