# Draft of outstanding issues in relation to:

# *Foreign Influence Transparency Scheme Bill 2017*

# *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017*

***(the following is not necessarily comprehensive, there may be more issues not yet identified)***

## Foreign Influence Transparency Scheme Bill 2017

1. Although the maximum penalties have been reduced, no criminal penalties should apply at all, as this Bill is not about covert or illegal behaviour. This is particularly the case because an individual can be tried for a crime at any time, there is no limitation period under Commonwealth law for crimes involving imprisonment for more than 6 months – see [s 15B Crimes Act](http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ca191482/s15b.html). Alternatively, introduce an appropriate limitation period (2 years?)
2. Section 11(1) has been amended to make it clear that collaboration and foreign funding do not make a relationship ‘on behalf of’ someone else. However 11(3) still imports the concept of communality/ collaboration. Should 11(3) be deleted or qualified to make it clear that only direct agency relationships are caught under 11(1)?
3. Section 12(1) has been clarified by deleting the words “(including the outcome)” to clarify that the references to influence are about influence in relation to processes or proceedings. However, does influence of a process logically also include influence as to the outcome? Might it be necessary to specifically say that 12(1) does not cover influence as to outcomes to avoid all doubt. Note that influence is unlikely to be taken to include ‘agreement with’. This legislation therefore effectively targets disagreement with government or political processes or proceedings.
4. Section 12(1) has been expanded under Schedule 5 of the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017,* to include processes in relation to a registered political campaigner under the *Electoral Act.* Is this appropriate? How would this work? New Section 12(7) gives examples of: processes in relation to the campaigner’s ‘platform’ or ‘policy on any matter of public concern.’ Similarly the definition of ‘general political lobbying’ has been expanded to include lobbying a political campaigner. Is this desirable?
5. The definition of ‘foreign political organisation’ has not been amended. While section 26(2) provides an exemption for the activities of UN persons or associated persons, it is not clear whether the UN is intended to be covered by the definition of a foreign political organisation. The Explanatory Memorandum (par 132) is not clear on this point. It is strongly submitted that the UN and related bodies should be excluded from the definition of ‘foreign political organisation’ and that the definition should be limited to organisations that field candidates in government elections. There is otherwise the risk that the definition might inadvertently capture foreign charities, think tanks and the like which engage in advocacy. Alternatively this unintended effect could be avoided by clarifying that section 12(1) does not apply to advocacy about policies or ideas. While the new 11(4) is of some comfort, it is still possible for it to be argued that the subsidiary is acting ‘on behalf of’ the foreign parent company in relation to particular matters.
6. The exemption in relation to legal advice and representation should be amended to include incidental work and to remove categories of representation. All normal legal representation should be exempt.
7. Should an exemption be included to clarify that academic writing and speaking in collaboration with foreign universities or similar, but not directed by such bodies, is not caught? This would be especially desirable if section 11(3) is not deleted.
8. The definition of foreign government-related entity could capture publicly listed companies. Should there be an exemption for such companies?

## National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017

1. The UN and related bodies and representatives should not be included in the definition of ‘foreign principal’. As the legislation is currently drafted, communication with the UN or related bodies risks being caught as espionage under section 91.2.
2. The definition of ‘national security’ should not include economic relations as this is too broad and makes it even more difficult to know if a provision applies. Query whether other aspects of the definition should also be removed.
3. Query whether the non-covert behaviour identified under sections 92.2 (2) and 92.3(2) should be criminalised.