

Gareth Evans versus the Surveillance State: application of the Foreign Influence Transparency Scheme

John Menadue – *pearls and Irritations* - 23 July 23, 2021

<https://johnmenadue.com/john-menadue-gareth-evans-versus-the-surveillance-state-application-of-the-foreign-influence-transparency-scheme/>

See below a letter exchange between Assistant Secretary, Integrity and Security Division Attorney-General's Department and ANU Professor Gareth Evans and former Foreign Minister regarding the Foreign Influence Transparency Scheme.

Gareth Evans did not give his response to the media but did copy his reply to a number of former Cabinet, diplomatic and ANU colleagues, from which it found its way into yesterday's The Australian. Some of the story being out, he has now agreed to put the full exchange on the public record. His colleagues enthusiastically welcomed his robust response. Several have offered to visit him in prison.

The Hon Gareth Evans AC QC

Dear Mr Evans

Foreign Influence Transparency Scheme — Potential registration obligations

I am writing to you about potential registration obligations you may have under the Foreign Influence Transparency Scheme Act 2018 (Cth) (the Act) relating to speaking roles you have undertaken at certain overseas events, and roles you have undertaken for international bodies. Registration obligations for these and other activities may arise given your standing as a former Cabinet Minister.

Under the Act, former Cabinet Ministers have a lifetime obligation to register any activity undertaken 'on behalf of' a foreign principal. This obligation is defined broadly in the Act and applies regardless of whether the purpose of the activity is to exert political or governmental influence, and whether or not the activity occurs in Australia. Under section 10 of the Act, a foreign principal is:

- a foreign government
- a foreign political organisation
- a foreign government-related entity, or
- a foreign government-related individual.

Section 11 of the Act defines when a person undertakes an activity 'on behalf of' a foreign principal for the purposes of the Act. This includes, but is not limited to, cases where the person undertakes the activity:

- under an arrangement with the foreign principal (whether written or unwritten, and regardless of whether consideration is payable), or
- at the request of the foreign principal (which is intended to cover cases where a foreign principal asks, formally or informally, for a person to do something).

The Act imposes broader registration requirements on former Cabinet Ministers due to the position of trust they hold on behalf of the Australian public, and the significant influence former Cabinet Ministers are able to bring to bear.

It is the department's understanding, from publicly available information, that you have held, or may continue to hold, positions with certain international organisations which may be foreign principals under the Act. It also appears you have undertaken speaking engagements at international events hosted by entities which may be foreign principals under the Act. By way of example, the following activities may be registrable:

- holding a position on the Global Advisory Committee of the Jeju Forum for Peace and Prosperity, and
- speaking at the Jeju Forum for Peace and Prosperity.

We ask that you consider the extent to which activities and positions of these kinds may give rise to registration obligations under the Foreign Influence Transparency Scheme.

Registration obligations will only arise for relevant activities undertaken after the Act commenced on 10 December 2018, and which are not subject to an exemption under Division 4 of the Act. Given your former position as Chancellor at the Australian National University, you may wish to consider whether the exemption in section 25A for persons holding an appointment under a law of the Commonwealth exempts you from registration obligations over the period of this appointment.

Thank you for considering this matter. If you require any additional information about the Foreign Influence Transparency Scheme, including the application of potential exemptions to your circumstances, please do not hesitate to contact the responsible team on (02) 6141 3222 or at transparency@ag.gov.au.

Yours sincerely

Autumn Field

Assistant Secretary

Integrity and Security Division

Attorney-General's Department

Ms Field

Assistant Secretary

Integrity and Security Division

Attorney-General's Department

I regard this communication as a joke, albeit one in very poor taste, and propose to treat it accordingly.

I have indeed, since my time as a Cabinet minister, been associated with scores of international organizations in speaking, writing or occasional small advisory roles, as my very transparent website (www.gevans.org) makes clear and your obviously assiduous researches have confirmed.

Some of these organizations have certainly relied on foreign government funding to survive – among them the UK's Chatham House and Ditchley Foundation, the United States Institute of Peace and South Korea's Jeju Forum – and those governments have probably seen national reputational advantage in providing that support.

But every international organization with which I have been even marginally associated has been devoted, as I have been throughout my many decades of public life, to making our region or the wider world safer and saner, through improving the quality of peace and security decision making and/or advancing human rights and humanitarian goals.

All aspirations which seem manifestly beyond the interest and competence of the present Australian government and all who sail with it.

Might I suggest to the Attorney-General's Department and those who direct it that, if you are genuinely concerned about protecting Australia's national interests. and the integrity and reputation of our national institutions, you apply your scarce resources a little more productively. Filing a no-bill in the Collaery case, for example. Or finally implementing, after years of indefensible foot-dragging, a national ICAC.

Yours sincerely

Gareth Evans