

# Foreign Influence Transparency Scheme Act 2018

## 3 Object

- Provide a scheme for persons who undertake activities on behalf of foreign governments
- Transparency of their activities on behalf of those foreign principals

## 4 Simplified outline of this Act

- Person undertakes activities on behalf of a foreign principal may be liable to register, depending on the foreign principal and activities undertaken.
- A registrant has various responsibilities to ensure the information about the activities of registrants is up to date and appropriate disclosures are made.
- Penalties apply for
  - person fails to register
  - registrant who fail to fulfil their responsibilities

## 5 Extension to external Territories

- Extends to every external Territory.

## 7 Constitutional basis and severability

- Based on ss51(xxix) and (xxxix) of the Constitution; and implied legislative powers of the Commonwealth.

## 8 Application to Commonwealth, States and Territories

- The following are not required to register:
  - the Crown in right of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory;
  - a department or instrumentality of the Commonwealth or of a State or Territory mentioned in paragraph (a).

## 9 Concurrent operation of State and Territory laws

## 9A Relationship of this Act to certain privileges and immunities

This Act does not affect the law relating to the powers, privileges and immunities

- 1) Parliamentary privilege
- 2) Legal professional privilege
- 3) the Secretary's powers under ss 45 and 46 do not extend to requiring a person to give information or documents if the information or documents are protected by a privilege or immunity.

## 10 Definitions

***foreign principal*** means:

- (a) a foreign government;
- (b) a foreign government related entity;
- (c) a foreign political organisation;
- (d) a foreign government related individual.

**foreign government related entity** means a person [(a): company; (b): not company; (c): a person other than body politic and foreign principal is a foreign political organisation] , other than an individual, who is related to a foreign principal that is a foreign government or a foreign political organisation in one or more of the following ways:

- (a) if the person is a company—one or more of the following applies:
  - (i) the foreign principal holds more than 15% of the issued share capital of the company;
  - (ii) the foreign principal holds more than 15% of the voting power in the company;
  - (iii) the foreign principal is in a position to appoint at least 20% of the company’s board of directors;
  - (iv) the directors of the company are accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the foreign principal;
  - (v) the foreign principal is in a position to exercise, in any other way, total or substantial control over the company;
  
- (b) if the person is NOT a company—either of the following applies:
  - (i) the members of the executive committee (however described) of the person are accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the foreign principal;
  - (ii) the foreign principal is in a position to exercise, in any other way, total or substantial control over the person;
  
- (c) if the person is a person other than a body politic and the foreign principal is a foreign political organisation:
  - (i) a director, officer or employee of the person, or any part of the person, is required to be a member or part (however described) of that foreign political organisation; and
  - (ii) that requirement is contained in a law, or in the constitution, rules or other governing documents by which the person is constituted or according to which the person operates.

**foreign political organisation** includes:

- (a) a foreign political party; and
- (b) a foreign organisation that exists primarily to pursue political objectives.

**foreign government related individual** means an individual:

- (a) who is neither an Australian citizen nor a permanent Australian resident; and
- (b) who is related to a foreign principal that is a foreign government, foreign government related entity or foreign political organisation in either or both of the following ways:
  - (i) the individual is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the foreign principal;
  - (ii) the foreign principal is in a position to exercise, in any other way, total or substantial control over the individual.

## 11 Undertaking activity on behalf of a foreign principal

- 1) A person undertakes an activity on behalf of a foreign principal if:
  - (a) the person undertakes activities ..... circumstances:
    - (i) under an arrangement with the foreign principal;
    - (ii) in the service of the foreign principal;
    - (iii) on the order or at the request of the foreign principal;
    - (iv) under the direction of the foreign principal; and

(b) at the time the arrangement ..., both the person and the foreign principal knew or expected that the person would or might:

(i) undertake the activity; and

(ii) do so in circumstances set out in section 20, 21, 22 or 23 (whether or not the parties expressly considered the existence of the scheme).

2) Does not matter whether consideration is payable.

3) An activity undertaken by a subsidiary (registered under the Corporations Act 2001) of a foreign principal is not undertaken on behalf of a foreign principal merely because it is a subsidiary of a foreign principal.

## 12 **Activity for the purpose of political or governmental influence**

1) Activity for the purpose of *political or governmental influence*, if the primary or substantial purpose is to influence the public one or more of the following:

a) federal election;

b) federal government decision;

c) proceedings of a House of the Parliament;

d) registered political party;

e) member of the Parliament who isn't a member of a registered political party

f) candidate in a federal election who is not endorsed by a registered political party.

## 13 **Communications activity**

1) *Communications activity* if a person communicates or distributes information or material to the public.

2) Material: oral, visual, graphic, written, electronic, digital and pictorial forms.

3) NOT communications activity if:

a) in the ordinary course of the disseminator's business; and

b) the material produced entirely by a person other than the disseminator or produced by the disseminator only to the extent that alters the material, without affecting substance; and

c) the identity of the producer is apparent in the communicating or distributing or is disclosed.

4) This section does not apply to a carriage service provider (within the meaning of section 87 of the *Telecommunications Act 1997*)

## 13A **Registrable arrangement**

1) *Registrable arrangement*: arrangement between a person and a foreign principal to undertake, on behalf of the foreign principal, activities that would be registrable in relation to the foreign principal.

2) NOT registrable if exempt under Division 4 of Part 2.

## 14 **Purpose of activity**

a) intention or belief of the person undertaking the activity; and

b) the intention of any foreign principal and/or all of the circumstances in which the activity is undertaken.

#### 14A **Transparency notices**

- *Transparency notice*: a provisional transparency notice or a final transparency notice.

#### 14B **Provisional transparency notice**

- 1) A *provisional transparency notice* will be issued once the Secretary is satisfied that a person is a foreign government related entity or a foreign government related individual.
- 2) Notice need to be in writing and with sufficient details to identify a person.

#### 14C **Submissions in relation to provisional transparency notice**

- 1) Secretary must prepare invitation and give both invitation and notice to the person ASAP.
- 2) Invitation must invite the person to make submissions and set out the effect of false or misleading information and notify right to have decision reviewed.

#### 14D **When a transparency notice is in force**

- A transparency notice comes into force on the day the notice is first made available to the public on a website and remains in force until revoked.

#### 14E **Varying or revoking transparency notices**

#### 14F **Transparency notice is not a legislative instrument**

#### 14G **Requirements in relation to procedural fairness**

- not required to observe any requirements of procedural fairness

#### 14H **Review of decisions relating to transparency notices**

#### 14J **Protection against actions for defamation**

## **Part 2 - Registration under the scheme**

### 15 **Simplified outline of this Part**

- Liable to register if the person: (s18(1))
  - (a) undertakes registrable activities on behalf of a foreign principal or
  - (b) enters an arrangement with a foreign principal to undertake registrable activities on behalf of the foreign principal.
    - Remain liable to register until ceasing to be liable under section 19.
    - Doesn't matter if the person only undertakes an activity once or never undertakes an activity under the arrangement (s18(3))
- Registrable activity? Depends on who the foreign principal is and the purpose of the activity, and in some cases on the person's former status.
- Once liable to register, the person has 14 days to apply for registration.
- The person must register for each foreign principal on whose behalf the person undertakes registrable activities.
- The person continues to be liable to register until the person notifies the Secretary otherwise and ceases to have any arrangement with the foreign principal.

- Registration ends if the person notifies the Secretary that the person has ceased to be liable or fails to annually renew the registration.
- Exemptions apply: for example, diplomatic and consular activities or activities for the purposes of providing humanitarian aid or humanitarian assistance.

## **Division 2—Requirement to register**

### **16 Requirement to register**

- (1) A person who becomes liable to register and has not registered must apply for registration in relation to the foreign principal, no later than 14 days after becoming liable.
- (2) Application must be in writing and approved form, given in approved manner and accompanied by required information.

### **17 When a person is registered under the scheme**

- (1) The person is registered from the day the application is given until registration ends.
- (2) Paragraph (1) applies even if the application is made more than 14 days after the person became liable.

### **18 Persons who are liable to register**

### **19 Ceasing to be liable to register**

- (1) *ceases* to be liable to register if: the person has given the Secretary a notice in relation to the foreign principal under section 31 and no registrable arrangement exists.

## **Division 3 – Registrable activities**

### **20 Registrable activities: parliamentary lobbying on behalf of foreign government**

Activity undertaken on behalf of a foreign government is **registrable** in relation to the foreign government if:

- a) activity is parliamentary lobbying in Australia (regardless of political or governmental influence) and
- b) the person is not exempt under Division 4.

### **21 Registrable activities: activities in Australia for the purpose of political or governmental influence**

Registrable activity if:

- a) activity is covered by an item in the table; and
- b) it is the kind of foreign principal specified for the activity in the table; and
- c) the person is not exempt under Division 4

Activities in Australia for the purpose of political or governmental influence		
Item	Activity	Foreign principal
1	Parliamentary lobbying: (a) in Australia; and (b) for the purpose of political or governmental influence	(a) a foreign government related entity; or (b) a foreign political organisation; or (c) a foreign government related individual
2	General political lobbying: (a) in Australia; and (b) for the purpose of political or governmental influence	any kind of foreign principal

  

Activities in Australia for the purpose of political or governmental influence		
Item	Activity	Foreign principal
3	Communications activity: (a) in Australia; and (b) for the purpose of political or governmental influence	any kind of foreign principal
4	Disbursement activity: (a) in Australia; and (b) for the purpose of political or governmental influence	any kind of foreign principal

22 **Registrable activities: former Cabinet Ministers**

23 **Registrable activities: recent designated position holders**

## Division 4—Exemptions

24 **Exemption: humanitarian aid or assistance**

- Exempt if the activity is, or relates primarily to, the provision of humanitarian aid or humanitarian assistance.

25 **Exemption: legal advice or representation**

- Exempt if the activity is, or relates primarily to, or is incidental to, the provision of legal advice or legal representation in proceedings or in relation to a government administrative process involving the foreign principal.

25A **Exemption: members of Parliament and statutory office holders**

26 **Exemption: diplomatic, consular or similar activities**

- Applicable to person who is entitled to privileges and immunities and UN or associated person.

27 **Exemption: religion** (religious activity)

29 **Exemption: foreign government employees and commercial or business pursuits**

Applicable to:

- 1) Individual employed by foreign government
- 2) Individual employed foreign government related entity.

- 3) Person operating under name of foreign government related entity and the activity is a commercial or business pursuit

NOT applicable to former Cabinet Ministers or recent designated position holders.

**29A Exemption: industry representative bodies**

The person must be:

- a) an entity formed in Australia, or incorporated under Cth; and
- b) represent the interests of a particular sector of industry; and
- c) has members who are also Australian entities; and
- d) activity relates primarily to the interests of business.

**29B Exemption: personal representation in relation to government administrative process etc.**

**29C Exemption: registered charities**

**29D Exemption: artistic purposes**

**29E Exemption: certain registered organisations**

- Applicable to organisation registered under the *Fair Work (Registered Organisations) Act 2009*

**29F Exemption: activities of members of certain professions**

- Applicable to a tax agent, a customs broker, a liquidator or receiver.

**30 Exemption: prescribed circumstances**

**Division 5—End of registration**

**31 Notice of end of liability to register**

- Give a writing notice to the Secretary, once the person has ceased to undertake activities on behalf of the foreign principal and there is no registrable arrangement in existence.

**32 End of registration**

- Registration ends on the day specified in a notice.

**Part 3—Responsibilities of registrants under the scheme**

**Division 1—Simplified outline of this Part**

**33 Simplified outline of this Part**

Responsibilities of a registrant:

- (a) report any material changes affecting the registration and any disbursement activity undertaken on behalf of the foreign principal; and
- (b) during the voting period for a federal election or designated vote—review the currency of information provided by the registrant and promptly report about certain registrable activities undertaken during the voting period; and
- (c) make disclosures when undertaking communications activity on behalf of the foreign principal; and

- (d) renew registration annually for so long as the person remains liable to register under the scheme; and
- (e) keep proper records.

## **Division 2—Reporting to the Secretary**

### **34 Reporting material changes in circumstances**

- Notify the Secretary when a person become aware that information provided will become inaccurate or misleading.
- Written notice must be given before the end of the period of 14 days after the day the person becomes aware.

### **35 Reporting disbursement activity in Australia for the purpose of political or governmental influence (other than in voting period)**

Must give notice to the Secretary if:

- the disbursement activity is registrable within the meaning of s 21 (registrable activity); and
- value of the money or things of value disbursed reaches the electoral donations threshold or reaches a multiple of that threshold (s 35 is not applicable if this happen on a day in the voting period for a federal election or designated vote)

### **36 Reporting on registration review when voting period begins**

- If a voting period begins for a federal election, a person must review the information provided and confirming that the registration is up to date.
- Does not apply if the person applied for the registration under s 16, or renewed the registration under s 39, less than 14 days before the voting period began.

### **37 Reporting registrable activity during voting periods**

- This section applies to disbursement activity if it is registrable activity (s21) and reaches the threshold under s 35.

## **Division 3—Other responsibilities**

### **38 Disclosure in communications activity**

- Must make a disclosure if undertaking communications activity that is registrable (s21)

### **39 Annual renewal of registration**

- Registration must be renewed by the end of the renewal period each year if the person remains liable to register, unless a notice of end of liability to register has been given to the Secretary under s31.

### **40 Keeping records**

- Must keep records of “the matters” while registered, until end of 3 years after the registration ends.
- Not require to keep the record for more than 10 years from the day the record was made.
- “the matters”:
  - registrable activities the person undertakes on behalf of the foreign principal;
  - benefits provided to the person by the foreign principal;
  - information or material forming part of any communications activity that is registrable in relation to the foreign principal;
  - any registrable arrangement between the person and the foreign principal;



- other information or material communicated or distributed to the public or a section of the public in Australia on behalf of the foreign principal.

## **Part 4—Obtaining and handling scheme information**

### **Division 1—Simplified outline of this Part**

#### **41 Simplified outline of this Part**

- The Secretary must keep a register of information obtained.
- The Secretary has the power to obtain information from any person
- Information such as the names of registrants and foreign principals and descriptions of the registrable activities will be made publicly available.
- Other scheme information must be handled in accordance with the *Privacy Act 1988*, Part 5.6 of the *Criminal Code* (secrecy of information) and the authorisations set out in Division 4.

### **Division 2—Register of scheme information**

#### **42 Secretary must keep a register**

- Rules regarding the responsibilities of the Secretary to keep information obtained.

#### **43 Certain information to be made publicly available**

- Information relating to registrants
- Information relating to transparency notices
- Removal of information from website under prescribe circumstances

#### **44 Secretary may correct or update information in the register**

### **Division 3—Secretary’s powers to obtain information and documents**

#### **45 Notice requiring information to satisfy Secretary whether person is liable to register under the scheme**

- Applies if: reasonably suspects that a person might be liable to register and the person is not registered

#### **46 Notice requiring information relevant to scheme**

- Applies if: reasonably believes that a person has information relevant to scheme.

#### **47 Self-incrimination**

- A person can’t be excused from producing the document based on the ground that it might tend to incriminate or expose the person to a penalty.
- Information given is not admissible in evidence against the individual in criminal proceedings, except for an offence against s 60 of this Act, or ss 137.1 or 137.2 of the Criminal Code.

#### **48 Copies of documents**

- Secretary may inspect, make and retain copies a document with notice given under ss 45 & 46.

49 **Retention of documents**

- Document may be taken, and retained for as long as is necessary.
- Certified copy may be used.

**Division 4—Communicating and dealing with scheme information**

50 **Scheme information**

- *Scheme information* if: obtained by a scheme official in exercising powers under the scheme; or/and obtained by a person by way of a communication authorised under this Division.

51 **Scheme officials**

- the Secretary;
- an APS employee in the Department whom power is delegated under s 67; or functions in relation to the scheme;
- Person who performs functions under an agreement with the Commonwealth.

52 **Authorisation—purposes of scheme**

- Scheme officials may deal with scheme information for the purposes of performing functions.

53 **Authorisation—other purposes**

- Secretary may communicate scheme information, for a purpose and to a person specified in the table.

54 **Authorisation—secondary communication of or dealing with information**

- A person may communicate with scheme information if the information is obtained in the person's capacity as an employee or official of a person and deals with the information for the purposes for which the information was obtained.

55 **Authorisation—information publicly available**

- Allow to deal with scheme information if the information has already been communicated or made available to the public with the authority of the Commonwealth, including ss 43 & 69.

**Part 5—Enforcement**

56 **Simplified outline of this Part**

Criminal offence if:

- Failure to register t is a criminal offence.
- Failing to fulfil responsibilities
- Providing false or misleading information
- Destroying records.
- Failure to comply with a notice from the Secretary requiring information.

57 **Failure to apply for or renew registration**

- Intentional omission to apply or renew knowing required to do so, and registrable activity undertaken – 5 years imprisonment.
- Intentional omission to apply or renew reckless as to whether required to do so, and registrable activity undertaken - 3 years imprisonment
- Reckless omission to apply or renew knowing required to do so, and registrable activity undertaken - 3 years imprisonment

- Reckless omission to apply or renew reckless as to whether required to do so, and registrable activity undertaken - Imprisonment for 2 years
  - Intentional or reckless omission to apply or renew whether or not registrable activity undertaken – 12 months imprisonment
- 57A **Giving notice of end of liability to register while still liable to register**
- Notice given knowing arrangement still exists, and registrable activity undertaken– 5 years imprisonment.
  - Notice given reckless as to whether arrangement still exists, and registrable activity undertaken - Imprisonment for 3 years
  - Notice given knowing arrangement still exists, whether or not registrable activity undertaken - Imprisonment for 12 months
  - Notice given reckless as to whether arrangement still exists, whether or not registrable activity undertaken - Imprisonment for 6 months
- 58 **Failure to fulfil responsibilities under the scheme**
- Failure to fulfil reporting responsibility -60 penalty units.
  - Failure to fulfil responsibility to disclose in communications activity - 60 penalty units.
  - Failure to keep records - 60 penalty units
- 59 Failure to comply with notice requiring information
- Imprisonment for 6 months.
  - Doesn't apply: if a person merely fails to provide information within the applicable period and he took all reasonable steps to provide the information ASAP.
- 60 **False or misleading information or documents**
- Imprisonment for 3 years
  - Defence if: (defendant bears an evidential burden)
    - The information is not false or misleading in a material particular
    - The person is not informed of offence.
    - The document provided by a person is accompanied by a written statement signed by the person stating that the document is false and misleading.
- 61 Destruction etc. of records
- Failure to comply with s 40
  - Imprisonment for 2 years
- 61A **Geographical jurisdiction of offences**
- s 15.4 of the Criminal Code (extended geographical jurisdiction) - Applies to a defendant who was a former Cabinet Minister or a recent designated position holder.
  - s 14.1 of the Criminal Code (standard geographical jurisdiction) applies to any other offences under this part.

## Part 6—Miscellaneous

### 62 **Simplified outline of this Part**

- the treatment of persons who are not legal persons (such as partnerships) and other matters such as delegations, approvals and rule-making powers.

- Required the Minister to report annually to the Parliament about the operation of the scheme, and for the Parliamentary Joint Committee on Intelligence and Security to begin a review of the scheme within 3 years of the scheme commencing.

64 **Treatment of partnerships**

- Obligation is imposed on partners

65 **Treatment of other unincorporated bodies**

- Applies to a person that is not a legal person, other than a partnership, as if the person were a legal person, but with the changes prescribed by the rules.

66 **Approvals**

- The Secretary may, in writing, approve a form and a manner for giving a notice or renewal.

67 **Delegations**

- Secretary may delegate the functions or powers under this Act, except for power under ss 14B & 14E.

68 **Agreements**

- Secretary may, on behalf of the Commonwealth enter into a written agreement with a person and make payments to the person.

69 **Annual report**

- Secretary must provide a report on the operation of the scheme after the end of each financial year.

70 **Review of scheme by Parliamentary Joint Committee on Intelligence and Security**

71 **Rules**

- Minister has power to make rules prescribing matter.