



# **Foreign Influence Transparency Scheme Act 2018**

**No. 63, 2018**

**An Act to establish a scheme to improve the  
transparency of activities undertaken on behalf of  
foreign principals, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Foreign Influence Transparency Scheme Act 2018

No. 63, 2018

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**An Act to establish a scheme to improve the  
transparency of activities undertaken on behalf of  
foreign principals, and for related purposes**

*[Assented to 29 June 2018]*

The Parliament of Australia enacts:

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## Part 1—Preliminary

### Division 1—Preliminary

#### 1 Short title

This Act is the *Foreign Influence Transparency Scheme Act 2018*.

#### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |  |                                   |
|--------------------------|--|-----------------------------------|
| Column 1                 | Column 2   | Column 3                          |
| Provisions               | Commencement   | Date/Details                      |
| 1. The whole of this Act | A single day to be fixed by Proclamation.<br>However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 10 December 2018<br>(F2018N00175) |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

#### 3 Object

The object of this Act is to provide for a scheme for the registration of persons who undertake certain activities on behalf of foreign governments and other foreign principals, in order to improve the



transparency of their activities on behalf of those foreign principals.

#### **4 Simplified outline of this Act**

A person who undertakes activities on behalf of a foreign principal may be liable to register under the scheme established by this Act, depending on who the foreign principal is, the activities the person undertakes and in some cases on the person's former status.

Certain information about registrants and their activities is made publicly available.

A registrant has various responsibilities under the scheme. In general terms, these responsibilities are aimed at ensuring that:

- (a) the Secretary has up to date information about the activities of registrants, especially during voting periods for federal elections; and
- (b) if a registrant makes disbursements or communications on behalf of the foreign principal, appropriate disclosures are made.

Penalties apply for persons who are liable to register under the scheme and do not register, and for registrants who fail to fulfil their responsibilities under the scheme.

#### **5 Extension to external Territories**

This Act extends to every external Territory.

#### **7 Constitutional basis and severability**

##### *Constitutional basis*

- (1) This Act relies on:
  - (a) the Commonwealth's legislative powers under paragraphs 51(xxix) and (xxxix) of the Constitution; and
  - (b) any implied legislative powers of the Commonwealth.

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*Additional and severable operation of Act*

- (2) Without limiting the effect of this Act apart from this section, this Act also has effect as provided by this section.
- (3) To avoid doubt, none of the following subsections of this section limit the operation of any other subsection of this section.

*Trade and commerce*

- (4) This Act has the effect it would have if its operation were expressly confined to activities undertaken in the course of trade and commerce to which paragraph 51(i) of the Constitution applies.

*Communications*

- (5) This Act has the effect it would have if its operation were expressly confined to activities undertaken using a service to which paragraph 51(v) of the Constitution applies.

*Corporations*

- (6) This Act has the effect it would have if its operation were confined to activities undertaken by:
  - (a) corporations to which paragraph 51(xx) of the Constitution applies; and
  - (b) persons undertaking activities on behalf of corporations to which paragraph 51(xx) of the Constitution applies.

*Census and statistics*

- (7) This Act has the effect it would have if its operation were expressly confined to obtaining information for purposes relating to census and statistics within the meaning of paragraph 51(xi) of the Constitution.

*Aliens*

- (8) This Act has the effect it would have if its operation were expressly confined to activities undertaken on behalf of persons who are aliens within the meaning of paragraph 51(xix) of the Constitution.

*External affairs*

- (9) This Act has the effect it would have if its operation were expressly confined to activities undertaken beyond the limits of the States and Territories.
- (10) This Act has the effect it would have if its operation were expressly confined to give effect to Australia's rights and obligations under an agreement with one or more foreign countries.

*Territories*

- (11) This Act has the effect it would have if its operation were expressly confined to activities undertaken in a Territory.

## **8 Application to Commonwealth, States and Territories**

Nothing in this Act requires any of the following to register under the scheme:

- (a) the Crown in right of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory;
- (b) 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**

This Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

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

*Parliamentary privilege*

- (1) To avoid doubt, this Act does not affect the law relating to the powers, privileges and immunities of any of the following:
  - (a) each House of the Parliament;
  - (b) the members of each House of the Parliament;
  - (c) the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

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*Legal professional privilege*

- (2) To avoid doubt, this Act does not affect the law relating to legal professional privilege.

*Effect on Secretary's power to obtain information and documents*

- (3) In particular:
- (a) the Secretary's powers under sections 45 and 46 do not extend to requiring a person to give information, or produce documents or copies of documents, if:
    - (i) the information or documents are protected by a privilege or immunity mentioned in subsection (1) or (2); or
    - (ii) complying with the requirement would involve a breach of a privilege or immunity mentioned in subsection (1) or (2); and
  - (b) the person need not comply with any purported requirement to that effect.

## **Division 2—Definitions**

### **10 Definitions**

In this Act:

***applicable disallowance period***: see subsection 53(5).

***approved form***: see paragraph 66(a).

***approved manner***: see paragraph 66(b).

***arrangement*** includes a contract, agreement, understanding or other arrangement of any kind, whether written or unwritten.

***Australian police force*** means:

- (a) the Australian Federal Police; or
- (b) a police force or police service of a State or Territory.

***becomes*** liable to register: see subsection 18(1).

***benefit*** includes any advantage and is not limited to property.

***by-election*** has the same meaning as in Part XVB of the *Commonwealth Electoral Act 1918*.

***candidate*** has the same meaning as in the *Commonwealth Electoral Act 1918*. In particular, a person who is, at a time, taken to be a candidate in an election within the meaning of that Act is taken to be a candidate at that time for the purposes of this Act.

***ceases*** to be liable to register: see section 19.

***Commonwealth public official*** has the same meaning as in the *Criminal Code*.

***communications activity***: see section 13.

***deal*** with information or an article has the same meaning as in Part 5.6 of the *Criminal Code* (see subsections 90.1(1) and 121.1(1) of the Code).

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**designated position holder** means:

- (a) a Minister; or
- (b) a member of the Parliament; or
- (c) a person employed under section 13 or 20 of the *Members of Parliament (Staff) Act 1984* who is a member of the staff of a Minister and whose position is at or above the level of Senior Advisor; or
- (d) an Agency Head (within the meaning of the *Public Service Act 1999*); or
- (e) a deputy agency head (however described); or
- (f) the holder of an office established by or under a law of the Commonwealth and equivalent to that of Agency Head or deputy agency head; or
- (g) the holder of an office of the Commonwealth as an Ambassador or High Commissioner, in a country or place outside Australia.

**designated vote** means:

- (a) a referendum; or
- (b) a vote, survey, or other process for the expression of opinions, of the kind prescribed by the rules for the purposes of this paragraph.

**disbursement activity**: a person undertakes **disbursement activity** if:

- (a) the person disburses money or things of value; and
- (b) neither the person nor a recipient of the disbursement is required to disclose it under Division 4, 5 or 5A of Part XX of the *Commonwealth Electoral Act 1918*.

**electoral donations threshold** means \$13,500.

**federal election** means a House of Representatives election or a Senate election within the meaning of the *Commonwealth Electoral Act 1918*.

**final transparency notice**: see subsection 14C(4).

***foreign country*** means any country other than Australia or an external Territory (whether or not an independent sovereign State).

***foreign government*** means:

- (a) the government of a foreign country or of part of a foreign country; or
- (b) an authority of the government of a foreign country; or
- (c) an authority of the government of part of a foreign country; or
- (d) a foreign local government body or foreign regional government body.

***foreign government related entity*** means a person, 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 (however described) 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;

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- (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.

Note: A transparency notice issued under Division 3 of this Part may state that a person is a foreign government related entity.

***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.

Note: A transparency notice issued under Division 3 of this Part may state that a person is a foreign government related individual.

***foreign political organisation*** includes:

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

***foreign principal*** means:

- (a) a foreign government;



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

**former Cabinet Minister**, at a particular time, means a person:

- (a) who was a member of the Cabinet at any time before the particular time; and
- (b) who is not at the particular time a designated position holder.

**general political lobbying** means lobbying any one or more of the following:

- (a) a Commonwealth public official;
- (b) a Department, agency or authority of the Commonwealth;
- (c) a registered political party;
- (d) a candidate in a federal election;

other than lobbying that is Parliamentary lobbying.

**influence** includes affect in any way.

**liable to register**: see section 18.

**lobby** includes:

- (a) communicate, in any way, with a person or a group of persons for the purpose of influencing any process, decision or outcome; and
- (b) represent the interests of a person, in any process.

**on behalf of** a foreign principal: see section 11.

**parliamentary lobbying** means lobbying any one or more of the following persons:

- (a) a member of the Parliament;
- (b) a person employed under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*.

**person** means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a body politic;

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- (d) a partnership;
- (e) an association (whether or not incorporated);
- (f) an organisation (whether or not incorporated);
- (g) any combination of individuals who together constitute a body;
- (h) any body of a kind prescribed by the rules;

whether or not resident in, formed or created in, or carrying on business in, Australia, and whether constituted under an Australian or foreign law or not constituted under a law at all.

Note: See sections 64 and 65 for how the scheme applies to partnerships and other bodies that are not legal persons.

***political or governmental influence***: see section 12.

***provisional transparency notice***: see subsection 14B(1).

***purpose*** has a meaning affected by section 14.

***recent designated position holder***, at a particular time, means a person:

- (a) who was a designated position holder at any time in the 15 years before the particular time; and
- (b) who is not at the particular time a designated position holder.

***referendum*** has the same meaning as in the *Referendum (Machinery Provisions) Act 1984*.

***registered*** under the scheme in relation to a foreign principal: see section 17.

***registered political party*** has the same meaning as in the *Commonwealth Electoral Act 1918*.

***registrable*** activity in relation to a foreign principal: see sections 20, 21, 22 and 23.

***registrable arrangement***: see section 13A.

***registrant*** means a person who is registered under the scheme.

***renewal period***: see subsection 39(3).

**rules** means rules made under section 71.

**scheme** means this Act and the rules.

**scheme information**: see section 50.

**scheme official**: see section 51.

**Secretary** means the Secretary of the Department.

**transparency notice**: see subsection 14A(2).

**voting period** means any of the following:

- (a) for a federal election—the period:
  - (i) beginning on the day of the issue of the writ for the election under the *Commonwealth Electoral Act 1918*; and
  - (ii) ending at the time determined in accordance with that Act to be the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote in the election;
- (b) for a referendum—the period:
  - (i) beginning on the day of the issue of the writ for the referendum under the *Referendum (Machinery Provisions) Act 1984*; and
  - (ii) ending at the time determined in accordance with that Act to be the latest time on the voting day for the referendum at which an elector in Australia could enter a polling booth for the purpose of voting at the referendum;
- (c) for a vote, survey or process prescribed by the rules for the purposes of paragraph (b) of the definition of **designated vote**—the period prescribed by the rules.

## **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 the activity in any of the following circumstances:
    - (i) under an arrangement with the foreign principal;

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- (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 or service is entered into, or the order, request or direction made, both the person and the foreign principal knew or expected that:
- (i) the person would or might undertake the activity; and
  - (ii) the person would or might 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) For the purposes of subsection (1), it does not matter whether consideration is payable.
- (3) An activity undertaken by a company registered under the *Corporations Act 2001* is not undertaken ***on behalf of*** a foreign principal merely because the company is a subsidiary (within the meaning of the *Corporations Act 2001*) of a foreign principal.

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

- (1) A person undertakes an activity for the purpose of ***political or governmental influence*** if the sole or primary purpose, or a substantial purpose, of the activity is to influence one or more of the following:
- (a) a process in relation to a federal election or a designated vote;
  - (b) a process in relation to a federal government decision;
  - (c) proceedings of a House of the Parliament;
  - (d) a process in relation to a registered political party;
  - (e) a process in relation to a member of the Parliament who is not a member of a registered political party;
  - (f) a process in relation to a candidate in a federal election who is not endorsed by a registered political party.
- (2) A person also undertakes an activity for the purposes of ***political or governmental influence*** if the sole or primary purpose, or a substantial purpose, of the activity is to influence the public, or a

section of the public, in relation to a process or proceedings mentioned in subsection (1).

*Examples of federal government decisions*

- (3) For the purposes of paragraph (1)(b), decisions made by any of the following are examples of federal government decisions:
- (a) the Executive Council;
  - (b) the Cabinet or a committee of the Cabinet;
  - (c) a Minister or Ministers;
  - (d) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) or a subsidiary of a Commonwealth entity (within the meaning of that Act);
  - (e) a Commonwealth company (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
  - (f) an individual in the course of performing his or her functions in relation to a person or body mentioned in an above paragraph.
- (4) For the purposes of paragraph (1)(b) and subsection (3), a reference to a decision includes a decision of any kind in relation to any matter, including administrative, legislative and policy matters:
- (a) whether or not the decision is final; and
  - (b) whether or not the decision is a formal decision.

*Examples of processes in relation to a registered political party*

- (5) For the purposes of paragraph (1)(d), the following are examples of processes in relation to a registered political party:
- (a) processes relating to the party's:
    - (i) constitution; or
    - (ii) platform; or
    - (iii) policy on any matter of public concern; or
    - (iv) administrative or financial affairs; or
    - (v) membership; or
    - (vi) relationships with foreign principals;

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- (b) the conduct of the party's campaign in relation to a federal election or a designated vote;
- (c) the selection or endorsement of the party's candidates in relation to a federal election;
- (d) the allocation of the party's preferences in relation to a federal election;
- (e) the selection (however done) of officers of the party's executive or delegates to party conferences;
- (f) the election of a person to be the leader of the party in the Parliament of the Commonwealth;
- (g) the selection (however done) of persons to be:
  - (i) Ministers; or
  - (ii) shadow Ministers or party spokespersons (however described) in relation to the Commonwealth.

*Examples of processes in relation to independent members of Parliament and candidates*

- (6) For the purposes of paragraphs (1)(e) and (f), the following are examples of processes in relation to a person mentioned in those paragraphs:
  - (a) processes relating to the person's:
    - (i) platform; or
    - (ii) policy on any matter of public concern; or
    - (iii) administrative or financial affairs in his or her capacity as a member of the Parliament or candidate in a federal election; or
    - (iv) relationships with foreign principals;
  - (b) the conduct of the person's campaign in relation to a federal election or designated vote;
  - (c) the allocation of the person's preferences in relation to a federal election.

### 13 Communications activity

- (1) A person undertakes **communications activity** if the person communicates or distributes information or material to the public or a section of the public.

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- (2) For the purposes of subsection (1), a reference to information or material includes information or material in any form, including oral, visual, graphic, written, electronic, digital and pictorial forms.
- (3) Despite subsection (1), an activity undertaken by a person (the *disseminator*) is not *communications activity* if:
- (a) the activity is undertaken in the ordinary course of the disseminator's business; and
  - (b) the activity is communicating or distributing, to the public or a section of the public, information or material:
    - (i) produced entirely by a person other than the disseminator; or
    - (ii) produced by the disseminator only to the extent that the disseminator alters the information or material, without affecting substance, to ensure compliance with the law or to fit time or space constraints; and
  - (c) the identity of:
    - (i) if the producer produced the information or material on behalf of another person—that other person; or
    - (ii) otherwise—the producer of the information or material; is either apparent in the communicating or distributing or is disclosed in accordance with rules prescribed for the purposes of this paragraph.
- (4) Despite subsection (1), a carriage service provider (within the meaning of section 87 of the *Telecommunications Act 1997*) does not undertake *communications activity* in relation to information or material merely because the carriage service provider supplies the listed carriage service (within the meaning of section 16 of that Act) used to communicate the information or material.

### 13A Registrable arrangement

- (1) A *registrable arrangement* is an arrangement between a person and a foreign principal for the person to undertake, on behalf of the foreign principal, one or more activities that, if undertaken by the person on behalf of the foreign principal, would be registrable in relation to the foreign principal.

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- (2) An arrangement is not a *registrable arrangement* to the extent that the arrangement is for the person to undertake an activity in circumstances in which the person would be exempt under Division 4 of Part 2.

**14 Purpose of activity**

The purpose of an activity must be determined by having regard to:

- (a) the intention or belief of the person undertaking the activity;  
and
- (b) either or both of the following:
  - (i) the intention of any foreign principal on whose behalf the activity is undertaken;
  - (ii) all of the circumstances in which the activity is undertaken.



## **Division 3—Transparency notices**

### **14A Transparency notices**

- (1) For the purposes of this Act:
  - (a) a person stated to be a foreign government related entity in a transparency notice that is in force is taken to be a foreign government related entity; and
  - (b) a person stated to be a foreign government related individual in a transparency notice that is in force is taken to be a foreign government related individual.

Note: Section 14D sets out when a transparency notice is in force.

- (2) A **transparency notice** means:
  - (a) a provisional transparency notice; or
  - (b) a final transparency notice.

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

- (1) If the Secretary is satisfied that a person is a foreign government related entity or a foreign government related individual, the Secretary may issue a notice (a **provisional transparency notice**) stating that the person is a foreign government related entity or a foreign government related individual (as the case requires).

Note: The Secretary's powers to obtain information or documents under section 46 may assist the Secretary to be satisfied about whether a person is a foreign government related entity or foreign government related individual.

- (2) The provisional transparency notice must:
  - (a) be in writing; and
  - (b) include such details as the Secretary considers necessary to identify the person who is the subject of the notice.

Note 1: The Secretary must make provisional transparency notices publicly available on a website (see subsection 43(2A)).

Note 2: Section 14C provides for the person who is the subject of the notice to make submissions about the notice. A decision to issue a provisional transparency notice is also reviewable (see section 14H). Notice of

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review rights must be provided on the website with the provisional transparency notice (see subsection 43(2A)).

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

- (1) If the Secretary issues a provisional transparency notice, the Secretary must also:
  - (a) prepare an invitation for the person who is the subject of the notice in accordance with subsection (2); and
  - (b) take reasonable steps to give the invitation and the provisional transparency notice to the person as soon as practicable.
- (2) The invitation must:
  - (a) invite the person to make submissions to the Secretary about the provisional transparency notice within 14 days of the date of the invitation; and
  - (b) set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents); and
  - (c) notify the person of the person's right to have the decision to issue the provisional transparency notice reviewed.
- (3) If the person makes submissions about the provisional transparency notice within 14 days of the date of the invitation, the Secretary must consider the submissions before the end of the period of 28 days after the date of the invitation.
- (4) If a provisional transparency notice is not revoked before the end of the period of 28 days after the date of the invitation, the provisional transparency notice becomes a ***final transparency notice*** at the end of that period.

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

A transparency notice:

- (a) comes into force on the day the provisional transparency notice is first made available to the public on a website under subsection 43(2A); and
- (b) remains in force, whether as a provisional transparency notice or a final transparency notice, until revoked.

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Note: If a provisional transparency notice becomes a final transparency notice under subsection 14C(4), the provisional transparency notice made publicly available on a website must be accompanied by a statement to that effect (see subsection 43(2A)).

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

- (1) The Secretary may vary a transparency notice if the Secretary is satisfied that the details in the notice that identify the person stated to be a foreign government related entity or a foreign government related individual (as the case requires) should be updated or corrected.
- (2) The Secretary must revoke a transparency notice if the Secretary ceases to be satisfied that the person is a foreign government related entity or a foreign government related individual (as the case requires).
- (3) A variation or revocation of a transparency notice must be in writing.

Note 1: The Secretary must make a variation or revocation of a transparency notice publicly available on a website (see subsection 43(2A)).

Note 2: A decision to vary or revoke a transparency notice is reviewable (see section 14H). Notice of review rights must be provided on the website with the variation or revocation (see subsection 43(2A)).

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

A transparency notice, or a variation or revocation of a transparency notice, is not a legislative instrument.

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

The Secretary is not required to observe any requirements of procedural fairness in exercising a power or performing a function under this Division other than those set out in section 14C.

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

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Secretary:

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- (a) a decision under subsection 14B(1) to issue a provisional transparency notice;
- (b) a decision under subsection 14E(1) to vary a transparency notice;
- (c) a decision under subsection 14E(2) to revoke a transparency notice.

**14J Protection against actions for defamation**

- (1) No action for defamation lies against the Commonwealth, a Minister, the Secretary, the Department or another Agency (within the meaning of the *Public Service Act 1999*), or an officer of the Department or another Agency, because the Secretary or an officer takes any of the following actions:
    - (a) issues, varies or revokes a transparency notice;
    - (b) includes a transparency notice, or any variation or revocation of a transparency notice, on the register;
    - (c) makes available a transparency notice, or any variation or revocation of a transparency notice, on a website;
    - (d) publishes or otherwise makes available, in any way, a transparency notice, or any variation or revocation of a transparency notice;
    - (e) supplies or gives access to a draft transparency notice, or a draft of any variation or revocation of a transparency notice, to a Minister or Agency or any other person.
  - (2) Subsection (1) applies even if, in taking the action, there has been a failure to comply with a requirement of this Act or the *Administrative Appeals Tribunal Act 1975*.
  - (3) In this section:
    - officer** of a Department or Agency includes:
      - (a) a scheme official; and
      - (b) an APS employee in the Department or Agency; and
      - (c) a member of the staff of the Department or Agency; and
      - (d) a member of the Agency; and
      - (e) a person engaged to perform services for the Department or Agency.
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## **Part 2—Registration under the scheme**

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

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

A person may become liable to register under the scheme:

- (a) if the person undertakes registrable activities on behalf of a foreign principal (even if the person only does so once); or
- (b) if the person enters an arrangement with a foreign principal to undertake registrable activities on behalf of the foreign principal (whether or not the person actually undertakes the activities).

Whether a particular activity is registrable or not depends on who the foreign principal is and the purpose of the activity, and in some cases on the person's former status.

Once a person becomes 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.

In most cases, the person continues to be liable to register in relation to a foreign principal until the person notifies the Secretary otherwise and ceases to have any arrangement with the foreign principal.

Registration usually ends if the person notifies the Secretary that the person has ceased to be liable or if the person fails to annually renew the registration.

There are exemptions to ensure that a person does not have to register under the scheme for certain activities that commonly involve arrangements with foreign principals (for example,

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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:
  - (a) becomes liable to register under the scheme in relation to a foreign principal; and
  - (b) is not already registered under the scheme in relation to the foreign principal;

must apply to the Secretary for registration in relation to the foreign principal, no later than 14 days after becoming liable.

Note: It is an offence not to register if a person is liable to register (see section 57).

- (2) The application must be:
  - (a) in writing; and
  - (b) in an approved form (if any); and
  - (c) given in an approved manner (if any); and
  - (d) accompanied by any information or documents required by the Secretary.

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

- (1) If a person makes an application for registration in relation to a foreign principal that complies with subsection 16(2), the person is **registered** under the scheme, in relation to the foreign principal:
  - (a) from the day the application is given to the Secretary; and
  - (b) until the registration ends under section 32.
- (2) Paragraph (1)(a) applies even if the application is made more than 14 days after the person became liable to register in relation to the foreign principal.

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

- (1) If a person:
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- (a) undertakes an activity on behalf of a foreign principal that is registrable in relation to the foreign principal; or
  - (b) enters a registrable arrangement with a foreign principal; the person *becomes* liable to register under the scheme in relation to the foreign principal.
- (2) A person who has become liable to register under the scheme in relation to a foreign principal remains *liable to register* under the scheme in relation to the foreign principal until ceasing to be liable under section 19.
- (3) To avoid doubt:
- (a) paragraph (1)(a) applies even if the person only undertakes an activity once; and
  - (b) paragraph (1)(b) applies even if the person never undertakes an activity under the arrangement.

### 19 Ceasing to be liable to register

- (1) A person *ceases* to be liable to register in relation to a foreign principal, on a day, if:
- (a) the person has given the Secretary a notice in relation to the foreign principal under section 31 (notice of end of liability to register) specifying the day in accordance with subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease; and
  - (b) on the day, no registrable arrangement exists between the person and the foreign principal.

Note: A person must be registered under the scheme before the person can give a notice under section 31.

- (2) If a person is liable to register under the scheme in relation to a foreign principal only because of being one of the following kinds of persons, the person *ceases* to be liable to register in relation to the foreign principal the day he or she ceases to be that kind of person:
- (a) a former Cabinet Minister;
  - (b) a recent designated position holder.



## Division 3—Registrable activities

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

An activity that a person undertakes on behalf of a foreign government is **registrable** in relation to the foreign government if:

- (a) the activity is parliamentary lobbying in Australia (whether or not the purpose is political or governmental influence); and
- (b) the person is not exempt under Division 4 in relation to the activity.

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

- (1) An activity that a person undertakes on behalf of a foreign principal is **registrable** in relation to the foreign principal if:
  - (a) the activity is covered by an item in the table; and
  - (b) the foreign principal is the kind of foreign principal specified for the activity in the table; and
  - (c) the person is not exempt under Division 4 in relation to the activity.

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

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

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- (2) A single activity undertaken by a person may be covered by more than one item of the table in subsection (1). If it is, the scheme applies in relation to the activity as covered by each such item.

## 22 Registrable activities: former Cabinet Ministers

An activity that a person undertakes on behalf of a foreign principal is **registrable** in relation to the foreign principal if:

- (a) the person is a former Cabinet Minister; and
- (c) the activity is not registrable in relation to the foreign principal under another provision of this Division; and
- (d) the person is not exempt under Division 4 in relation to the activity.

## 23 Registrable activities: recent designated position holders

An activity that a person undertakes on behalf of a foreign principal is **registrable** in relation to the foreign principal if:

- (a) the person is a recent designated position holder; and
- (b) in undertaking the activity, the person contributes experience, knowledge, skills or contacts gained in the person's former capacity as a designated position holder; and
- (c) the activity is not registrable in relation to the foreign principal under another provision of this Division; and
- (d) the person is not exempt under Division 4 in relation to the activity.

## **Division 4—Exemptions**

### **24 Exemption: humanitarian aid or assistance**

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if the activity is, or relates primarily to, the provision of humanitarian aid or humanitarian assistance.

### **25 Exemption: legal advice or representation**

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if the activity is, or relates primarily to, or is incidental to, the provision of:

- (a) legal advice; or
- (b) legal representation in judicial, criminal or civil inquiries, investigations or proceedings; or
- (c) legal representation in relation to a government administrative process involving the foreign principal.

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

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if the person:

- (a) is a member of the Parliament; or
- (b) is a member of the Parliament of a State, the Legislative Assembly for the Australian Capital Territory or the Legislative Assembly of the Northern Territory; or
- (c) holds any office or appointment under a law of the Commonwealth, or under a law of a State or Territory.

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

- (1) A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:
  - (a) the foreign principal is a foreign government; and

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- (b) the person is entitled to privileges and immunities under the *Consular Privileges and Immunities Act 1972*, the *Diplomatic Privileges and Immunities Act 1967* or the *Overseas Missions (Privileges and Immunities) Act 1995*; and
  - (c) the activity is registrable in relation to the foreign principal:
    - (i) within the meaning of section 20 (parliamentary lobbying on behalf of a foreign government); or
    - (ii) within the meaning of section 21 (activities in Australia for the purpose of political or governmental influence); and
  - (d) undertaking the activity is within the scope of the functions that, under the Act mentioned in paragraph (b), entitle the person to the privileges and immunities conferred by the Act.
- (2) A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:
- (a) the foreign principal is a foreign government; and
  - (b) the person is a UN or associated person within the meaning of Division 71 of the *Criminal Code* (see subsection 71.23(1) of the Code); and
  - (c) undertaking the activity is within the scope of the functions that the person undertakes in the person's capacity as such a person.

**27 Exemption: religion**

A person is exempt in relation to a religious activity the person undertakes, in good faith, on behalf of a foreign principal.

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

*Individual employed by foreign government*

- (1) An individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal if:
- (a) the foreign principal is a foreign government; and
  - (b) the individual undertakes the activity:

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- (i) in the individual's capacity as an officer or employee of the foreign principal; and
- (ii) in the name of the foreign principal.

*Individual employed by foreign government related entity*

- (2) An individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal if:
  - (a) the foreign principal is a foreign government related entity; and
  - (b) the activity is a commercial or business pursuit undertaken by the individual in the individual's capacity as a director, officer or employee of the foreign principal; and
  - (c) it is apparent in the circumstances that the individual is undertaking the activity in that capacity.

*Person operating under name of foreign government related entity*

- (3) A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:
  - (a) the foreign principal is a foreign government related entity; and
  - (b) the activity is a commercial or business pursuit undertaken by the person in or under the name of the foreign principal or under a substantially similar name.

*Exemption not applicable to former Cabinet Ministers or recent designated position holders*

- (4) This section does not apply in relation to an activity undertaken by a former Cabinet Minister or a recent designated position holder.

**29A Exemption: industry representative bodies**

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) the person is an entity formed in Australia, or incorporated under a law of the Commonwealth, a State or a Territory (an ***Australian entity***); and

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- (b) the person's purpose is to represent the interests of business or a particular sector of business or industry; and
- (c) the person has members who are also Australian entities; and
- (d) the activity is, or relates primarily to, representing the interests of business, or the particular sector, as a whole.

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

An individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal who is also an individual if:

- (a) the individuals either:
  - (i) are members of the same family; or
  - (ii) know each other personally and the individual undertaking the activity does so because of this and in that individual's personal capacity; and
- (b) the activity is, or relates primarily to, representing in good faith the interests of the foreign principal in relation to:
  - (i) a government administrative process involving the foreign principal; or
  - (ii) matters affecting the personal welfare of the foreign principal.

**29C Exemption: registered charities**

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) the person is registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012*; and
- (b) the activity is undertaken in pursuit of a charitable purpose of the person within the meaning of Part 3 of the *Charities Act 2013*; and
- (c) the activity is not disbursement activity; and
- (d) at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:

- (i) the fact that the person is undertaking the activity on behalf of a foreign principal;
- (ii) the identity of the foreign principal.

### **29D Exemption: artistic purposes**

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) for a person other than an individual:
  - (i) the person's purpose is, or relates primarily to, the arts; and
  - (ii) the activity is, or relates primarily to, or is incidental to, the person's artistic purposes; and
- (b) for an individual—the person's purpose in undertaking the activity is, or relates primarily to, or is incidental to, the arts; and
- (c) the activity is not disbursement activity; and
- (d) at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:
  - (i) the fact that the person is undertaking the activity on behalf of a foreign principal;
  - (ii) the identity of the foreign principal.

### **29E Exemption: certain registered organisations**

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) the person is an association of employees, or an enterprise association, that is registered as an organisation under the *Fair Work (Registered Organisations) Act 2009*; and
- (b) the activity is undertaken in the interests of members of the organisation in Australia; and
- (c) the activity is not communications activity or disbursement activity; and
- (d) at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:

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- (i) the fact that the person is undertaking the activity on behalf of a foreign principal;
- (ii) the identity of the foreign principal.

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

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) the person's profession is any of the following:
  - (i) a tax agent;
  - (ii) a customs broker;
  - (iii) a liquidator or receiver; and
- (b) the activity is undertaken in the ordinary course of the person's practice of that profession; and
- (c) the activity is, or relates primarily to, or is incidental to, the provision of representation in relation to a government administrative process involving the foreign principal; and
- (d) at the time the activity is undertaken, both of the following matters are either apparent to all persons with whom the person is dealing or disclosed to them:
  - (i) the fact that the person is undertaking the activity on behalf of a foreign principal;
  - (ii) the identity of the foreign principal.

**30 Exemption: prescribed circumstances**

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal in the circumstances prescribed by the rules for the purposes of this section.



## **Division 5—End of registration**

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

(1) A person who is registered under the scheme in relation to a foreign principal may give the Secretary a notice under this section if the person is satisfied that:

- (a) the person has ceased to undertake activities on behalf of the foreign principal that are registrable in relation to the foreign principal; and
- (b) there is no registrable arrangement in existence between the person and the foreign principal.

Note 1: If a person gives this notice, the person's registration in relation to the foreign principal ends (see section 32).

Note 2: If a person gives this notice while a registrable arrangement is still in existence between the person and the foreign principal:

- (a) the person continues to be liable to register despite the notice (see subsection 19(1)); and
- (b) the person may commit an offence under this Act (see section 57A) and under the *Criminal Code* (see section 137.1 of the Code).

(2) The notice must be:

- (a) in writing; and
- (b) in an approved form (if any); and
- (c) given in an approved manner (if any); and
- (d) accompanied by any information or documents required by the Secretary.

(3) The notice must specify a day as the day the person's registration in relation to the foreign principal is to cease. The day:

- (a) must not be earlier than the day the notice is given; and
- (b) must not be later than the last day of the next renewal period for the registration (or, if the notice is given during a renewal period, the last day of that renewal period).

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**32 End of registration**

The registration of a person under the scheme in relation to a foreign principal ends on the earliest of the following days:

- (a) the day specified under subsection 31(3) in a notice given by the person under that section for the registration (notice of end of liability to register);
- (b) if the person is required to renew the registration under section 39 and does not do so—the first day after the end of the renewal period for the registration;
- (c) in circumstances prescribed by the rules—the day prescribed by the rules.

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

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

#### **33 Simplified outline of this Part**

A registrant has various responsibilities under the scheme. In general terms, the responsibilities are to:

- (a) promptly 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

- (1) If a person who is registered under the scheme in relation to a foreign principal becomes aware that information provided to the Secretary for the purposes of the registration:

- (a) is, or will become, inaccurate or misleading in a material particular; or
- (b) omits, or will omit, any matter or thing without which the information is or will be misleading;

the registrant must give the Secretary a notice correcting the inaccuracy or misleading impression.

Note: It is an offence for a registrant not to give this notice (see subsection 58(1)). It is also an offence under the *Criminal Code* to give false or misleading information in compliance with a law of the Commonwealth (see section 137.1 of the Code).

- (2) The notice must be given before the end of the period of 14 days after the day the person becomes aware of the matter.
- (3) The notice must be:
- (a) in writing; and
  - (b) in an approved form (if any); and
  - (c) given in an approved manner (if any); and
  - (d) accompanied by any information or documents required by the Secretary.
- (4) The following are examples of circumstances in which a person who is registered in relation to a foreign principal must give a notice to the Secretary under this section:
- (a) the person starts to undertake another kind of registrable activity on behalf of the foreign principal;
  - (b) another kind of registrable activity is added to the activities the person is to undertake under an arrangement with the foreign principal;

- (c) the person ceases to be exempt under Division 4 of Part 2 in relation to an activity the person undertakes on behalf of the foreign principal;
  - (d) consideration starts to be paid, or there is a change in consideration payable, to the person in relation to registrable activities undertaken on behalf of the foreign principal.
- (5) Subsection (1) does not apply in relation to information that would, apart from this subsection, be required to be included in a notice given under this section, if the information has been included in a notice given in accordance with:
- (a) section 36 (reporting on registration review when voting period begins); or
  - (b) section 37 (reporting registrable activity during voting periods).

This subsection applies even if the notice under this section was required to be given before the notice under section 36 or 37.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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

- (1) If:
- (a) a person is registered under the scheme in relation to a foreign principal; and
  - (b) the person undertakes disbursement activity on behalf of the foreign principal; and
  - (c) the disbursement activity is registrable in relation to the foreign principal within the meaning of section 21 (activity in Australia for the purpose of political or governmental influence); and
  - (d) the total value of the money or things of value disbursed in the course of the disbursement activity:
    - (i) reaches the electoral donations threshold; or
    - (ii) reaches a multiple of that threshold;

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the person must give the Secretary a notice specifying the total value reached.

Note: It is an offence for a registrant not to give this notice (see subsection 58(1)). It is also an offence under the *Criminal Code* to give false or misleading information in compliance with a law of the Commonwealth (see section 137.1 of the Code).

- (2) The notice must be given before the end of the period of 14 days after the day the total value reaches the threshold or multiple mentioned in paragraph (1)(d).
- (3) The notice must be:
  - (a) in writing; and
  - (b) in an approved form (if any); and
  - (c) given in an approved manner (if any); and
  - (d) accompanied by any information or documents required by the Secretary.
- (4) This section does not apply if the total value reaches the threshold or multiple mentioned in paragraph (1)(d) on a day in the voting period for a federal election or designated vote.

Note: In this case see section 37 instead.

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

- (1) If a voting period begins for a federal election (other than a by-election) or for a designated vote, a person who is registered under the scheme in relation to a foreign principal must:
  - (a) review the information provided by the person to the Secretary in relation to the registration; and
  - (b) give the Secretary a notice in relation to the information:
    - (i) confirming that the registration is up to date; or
    - (ii) if it is not—updating any information.

Note: It is an offence for a registrant not to give this notice (see subsection 58(1)). It is also an offence under the *Criminal Code* to give false or misleading information in compliance with a law of the Commonwealth (see section 137.1 of the Code).

- (2) The notice must be given before the end of the period of 14 days after the voting period begins.

- (3) The notice must be:
  - (a) in writing; and
  - (b) in an approved form (if any); and
  - (c) given in an approved manner (if any); and
  - (d) accompanied by any information or documents required by the Secretary.
- (4) Subsection (1) does not apply if the person applied for the registration under section 16, or renewed the registration under section 39, less than 14 days before the voting period began.

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

- (1) If:
  - (a) a person is registered under the scheme in relation to a foreign principal; and
  - (b) the person undertakes an activity on behalf of the foreign principal at any time in the voting period for a federal election (other than a by-election) or for a designated vote; and
  - (c) subsection (2) or (3) applies in relation to the activity; and
  - (d) the activity relates to the federal election or the designated vote;the person must give the Secretary a notice in relation to the activity.

Note: It is an offence for a registrant not to give this notice (see subsection 58(1)). It is also an offence under the *Criminal Code* to give false or misleading information in compliance with a law of the Commonwealth (see section 137.1 of the Code).

- (2) This subsection applies in relation to the activity if the activity is registrable in relation to the foreign principal within the meaning of:
  - (a) section 20 (parliamentary lobbying on behalf of a foreign government); or
  - (b) section 21 (activities in Australia for the purpose of political or governmental influence), other than disbursement activity.
- (3) This subsection applies in relation to disbursement activity if:

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- (a) the disbursement activity is registrable in relation to the foreign principal within the meaning of section 21 (activities in Australia for the purpose of political or governmental influence); and
  - (b) the total value of the money or things of value disbursed in the course of the disbursement activity reaches the threshold or multiple mentioned in paragraph 35(1)(d) in the voting period.
- (4) The notice must be given before the end of the period of 7 days after:
- (a) if subsection (2) applies in relation to the activity—the day the person undertakes the activity; or
  - (b) if subsection (3) applies in relation to the activity—the day the threshold or multiple is reached.
- (5) The notice must be:
- (a) in writing; and
  - (b) in an approved form (if any); and
  - (c) given in an approved manner (if any); and
  - (d) accompanied by any information or documents required by the Secretary.



## **Division 3—Other responsibilities**

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

- (1) If:
- (a) a person is registered under the scheme in relation to a foreign principal; and
  - (b) the person undertakes communications activity on behalf of the foreign principal; and
  - (c) the communications activity is registrable in relation to the foreign principal within the meaning of section 21 (activity in Australia for the purpose of political or governmental influence);

the person must make a disclosure about the foreign principal in accordance with rules made for the purposes of subsection (2).

Note: It is an offence for a registrant not to make the disclosure (see subsection 58(2)).

- (2) The rules may prescribe any or all of the following:
- (a) instances of communications activity;
  - (b) when and how disclosures are to be made in relation to instances of communications activity;
  - (c) the content, form and manner of disclosures;
  - (d) circumstances in which a person is exempt from making a disclosure.

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

- (1) By the end of the renewal period each year for a person's registration in relation to a foreign principal, the person must either:
- (a) if the person remains liable to register in relation to the foreign principal—renew the registration; or
  - (b) give the Secretary a notice under section 31 (notice of end of liability to register).

Note: It is an offence for a registrant not to renew if still liable to register (see section 57).

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- (2) A renewal must be:
  - (a) in writing; and
  - (b) in an approved form (if any); and
  - (c) given in an approved manner (if any); and
  - (d) accompanied by any information or documents required by the Secretary.
- (3) The *renewal period* for a person's registration in relation to a foreign principal is:
  - (a) the month beginning on either:
    - (i) the anniversary of the day the person applied (or most recently applied) under section 16 for registration in relation to the foreign principal; or
    - (ii) if another day is specified under paragraph (4)(a)—that other day; or
  - (b) if an extended period is specified under paragraph (4)(b)—that extended period.
- (4) On request by the person made in writing, the Secretary may, in writing:
  - (a) if satisfied it is appropriate to align renewal periods for registrations of a person registered in relation to more than one foreign principal—specify a day for the registration for the purposes of subparagraph (3)(a)(ii); or
  - (b) if satisfied that exceptional circumstances exist—specify an extended period for the registration, for a specified year, for the purposes of paragraph (3)(b).
- (5) An instrument made under subsection (4) is not a legislative instrument.

#### 40 Keeping records

- (1) A person who is registered under the scheme in relation to a foreign principal must keep records of the matters mentioned in subsection (2):
    - (a) while registered under the scheme in relation to the foreign principal; and
    - (b) until the end of 3 years after the registration ends.
-

Note: Certain conduct in relation to records is an offence (see subsection 58(3) and section 61).

- (1A) Despite subsection (1), a person is not required to keep any particular record for more than 10 years from the day the record was made.
- (2) The matters are the following:
- (a) registrable activities the person undertakes on behalf of the foreign principal;
  - (b) benefits provided to the person by the foreign principal;
  - (c) information or material forming part of any communications activity that is registrable in relation to the foreign principal;
  - (d) any registrable arrangement between the person and the foreign principal;
  - (e) 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

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**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 under the scheme.

The Secretary has the power to obtain information from any person if the Secretary reasonably believes the person has information relevant to the scheme.

Some scheme information will be made publicly available (mainly, the names of registrants and foreign principals and descriptions of the registrable activities being undertaken).

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**

- (1) The Secretary must keep a register of information in relation to the scheme.
- (2) The Secretary must include on the register the following information and documents for each person who is registered in relation to a foreign principal:
  - (a) the name of the person and the foreign principal;
  - (b) the application for the registration and any accompanying information or documents;
  - (c) any notices given by the person in accordance with Division 2 of Part 3 (reporting to the Secretary) and any accompanying information or documents;
  - (d) any renewal of the registration and any accompanying information or documents;
  - (e) a record of any other communications between the person and the Secretary;
  - (f) any information prescribed by the rules for the purposes of paragraph 43(1)(c) in relation to registrants and not mentioned in another paragraph of this subsection;
  - (g) any other information or documents the Secretary considers appropriate.
- (3) The Secretary must also include the following information and documents on the register:
  - (aa) any provisional transparency notices issued under section 14B;
  - (ab) any variation or revocation of a transparency notice under section 14E;
  - (ac) for any provisional transparency notices that become final transparency notices under subsection 14C(4)—a statement to that effect;
  - (a) any notices given by the Secretary to a person other than a registrant under:

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- (i) section 45 (notice requiring information to satisfy Secretary whether person is liable to register under the scheme); or
  - (ii) section 46 (notice requiring information relevant to scheme);
- and any responses received;
- (b) any information prescribed by the rules for the purposes of paragraph 43(1)(c) (other than in relation to registrants) and not mentioned in another paragraph of this subsection;
  - (c) any other information or documents the Secretary considers appropriate.

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

*Information relating to registrants*

- (1) The Secretary must make available to the public, on a website, the following information in relation to each person registered in relation to a foreign principal:
  - (a) the name of the person and the foreign principal;
  - (b) a description of the kind of registrable activities the person undertakes on behalf of the foreign principal;
  - (c) any other information prescribed by the rules for the purposes of this paragraph.
- (1A) If information that the Secretary is required to make available under subsection (1) is provided to the Secretary under section 36 (reporting on registration review when voting period begins) or 37 (reporting registrable activity during voting periods), the information must be made available within 48 hours of it being provided to the Secretary.
- (1B) Other information that the Secretary is required to make available under subsection (1) must be made available within 4 weeks of it being provided to the Secretary.
- (1C) However, the Secretary need not comply with subsection (1A) or (1B) if the Secretary is considering whether subsection (2) applies to the information.

- (2) Despite subsection (1), the website must not include information that the Secretary is satisfied:
- (a) is commercially sensitive; or
  - (b) affects national security; or
  - (c) is of a kind prescribed by the rules for the purposes of this subsection.

Note: A registrant who considers that information is commercially sensitive can specify this when giving the information.

*Information relating to transparency notices*

- (2A) The Secretary must also make available to the public, on a website, the following:
- (a) each provisional transparency notice issued under section 14B, along with:
    - (i) a written statement to the effect that a person whose interests are affected by the decision to issue the notice may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of the decision; and
    - (ii) if the notice becomes a final transparency notice under subsection 14C(4)—a written statement to that effect;
  - (b) any variation or revocation of a transparency notice under section 14E, along with a written statement to the effect that a person whose interests are affected by the decision to vary or revoke the notice may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of the decision.

Note: See also section 14H (review of decisions relating to transparency notices).

*Removal of information from website*

- (3) The rules may prescribe circumstances in which the Secretary is to remove publicly available information from the website.

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

The Secretary may correct or update information in the register.

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### **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**

- (1) This section applies if:
  - (a) the Secretary reasonably suspects that a person might be liable to register under the scheme in relation to a foreign principal; and
  - (b) the person is not registered under the scheme in relation to that foreign principal.
- (2) The Secretary may, by written notice given to the person, require the person:
  - (a) to give to the Secretary, within the period and in the manner and form specified in the notice, any information that may satisfy the Secretary as to whether the person is liable to register in relation to the foreign principal; or
  - (b) to produce to the Secretary, within the period and in the manner and form specified in the notice, any documents that may satisfy the Secretary as to whether the person is liable to register in relation to the foreign principal; or
  - (c) to make copies of any such documents and to produce to the Secretary, within the period and in the manner specified in the notice, those copies.

Note: It is an offence not to comply with the notice (see section 59). However, the notice does not override certain privileges and immunities (see section 9A).
- (3) The period specified in the notice must be a period of at least 14 days after the notice is given.
- (4) The Secretary may, on request by the person, extend the period by written notice given to the person.



- (5) Before giving a person a notice under subsection (2), the Secretary must have regard to the costs, in complying with any requirement in the notice, that would be likely to be incurred by the person.
- (6) Subsection (5) does not limit the matters to which regard may be had.
- (7) The notice must set out:
  - (a) the relationship of this Act to the privileges and immunities mentioned in section 9A; and
  - (b) the effect of section 60 of this Act and sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).
- (8) Nothing in this section authorises the Secretary to give a person a notice for the purpose of obtaining information or documents in relation to the possibility of the person having committed an offence against Part 5.1 (treason and related offences), Part 5.2 (espionage and related offences) or Part 5.6 (secrecy of information) of the *Criminal Code*.

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

- (1) This section applies if the Secretary reasonably believes that a person (whether or not a registrant) has information or a document that is relevant to the operation of the scheme.
- (2) The Secretary may, by written notice given to the person, require the person:
  - (a) to give to the Secretary, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Secretary, within the period and in the manner specified in the notice, any such documents; or
  - (c) to make copies of any such documents and to produce to the Secretary, within the period and in the manner specified in the notice, those copies.

Note: It is an offence not to comply with the notice (see section 59).  
However, the notice does not override certain privileges and immunities (see section 9A).

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- (3) The period specified in the notice must be a period of at least 14 days after the notice is given.
- (4) The Secretary may, on request by the person, extend the period by written notice given to the person.
- (5) Before giving a person a notice under subsection (2), the Secretary must have regard to the costs, in complying with any requirement in the notice, that would be likely to be incurred by the person.
- (6) Subsection (5) does not limit the matters to which regard may be had.
- (7) The notice must set out:
  - (a) the relationship of this Act to the privileges and immunities mentioned in section 9A; and
  - (b) the effect of section 60 of this Act and sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).
- (8) Nothing in this section authorises the Secretary to give a person a notice for the purpose of obtaining information or documents in relation to the possibility of the person having committed an offence against Part 5.1 (treason and related offences), Part 5.2 (espionage and related offences) or Part 5.6 (secrecy of information) of the *Criminal Code*.

**47 Self-incrimination**

- (1) A person is not excused from giving information or producing a document or a copy of a document under section 45 or 46 on the ground that the information or the production of the document or copy might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
  - (a) the information given or the document or copy produced; and
  - (b) giving the information or producing the document or copy; and

- (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy;

is not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against section 60 of this Act, or section 137.1 or 137.2 of the *Criminal Code* that relates to this Division (false or misleading information or documents), or in civil proceedings.

Note: Paragraph (2)(c) confers a derivative use immunity. For example, in criminal proceedings for an offence by an individual against Part 5.2 of the *Criminal Code* (espionage and related offences), any information, document or other thing obtained as a direct or indirect consequence of the individual giving information or producing documents in compliance with a notice under section 45 or 46 would not be admissible.

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

- (1) The Secretary may inspect a document or copy produced in compliance with a notice given under section 45 or 46 and may make and retain copies of such a document.
- (2) The Secretary may retain possession of a copy of a document produced in compliance with a notice given under section 45 or 46.

#### **49 Retention of documents**

- (1) The Secretary may take, and retain for as long as is necessary, possession of a document produced in compliance with a notice given under section 45 or 46.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Secretary to be a true copy.
- (3) A certified copy:
  - (a) may be used by the Secretary if the Secretary returns possession of the original document to the person otherwise entitled to possession of it; and
  - (b) in any case—must be received in all courts and tribunals as evidence as if it were the original.

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- (4) Until a certified copy is supplied, the Secretary must, at such times and places as he or she thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of the document.

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

### **50 Scheme information**

Information is *scheme information* if the information:

- (a) is obtained by a scheme official in the course of performing functions or exercising powers under the scheme; or
- (b) was information to which paragraph (a) applied and is obtained by a person by way of a communication authorised under this Division.

### **51 Scheme officials**

Each of the following is a *scheme official*:

- (a) the Secretary;
- (b) an APS employee in the Department:
  - (i) to whom a function or power is delegated under section 67; or
  - (ii) whose functions otherwise include functions in relation to the scheme;
- (c) any other person who performs functions in relation to the scheme under an agreement with the Commonwealth.

### **52 Authorisation—purposes of scheme**

A scheme official may communicate or otherwise deal with scheme information:

- (a) for the purposes of performing functions or exercising powers under the scheme; or
- (b) otherwise in the course of performing the scheme official's functions in relation to the scheme.

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**53 Authorisation—other purposes**

- (1) The Secretary may communicate scheme information, for a purpose specified in an item in column 1 of the table, to a person specified for that purpose in column 2 of the table.

| <b>Authorisation for Secretary to communicate scheme information</b> |  |   |
|--|--|---|
| <b>Item</b>  | <b>Column 1<br/>Communication for this<br/>purpose:</b>  | <b>Column 2<br/>May be made to:</b>   |
| 1  | an enforcement related activity of an enforcement body within the meaning of the <i>Privacy Act 1988</i>           | the enforcement body  |
| 2  | the protection of public revenue   | any of the following that has functions in relation to the purpose:<br>(a) a Department, agency or authority of the Commonwealth, a State or a Territory;<br>(b) an Australian police force |
| 3  | the protection of security within the meaning of the <i>Australian Security Intelligence Organisation Act 1979</i> | any of the following that has functions in relation to the purpose:<br>(a) a Department, agency or authority of the Commonwealth, a State or a Territory;<br>(b) an Australian police force |
| 4  | a purpose prescribed by the rules  | a person prescribed by the rules  |

- (2) The Minister must consult the Information Commissioner before making rules for the purposes of item 4 of the table in subsection (1).
- (3) The Parliamentary Joint Committee on Intelligence and Security must:
- (a) review rules made for the purposes of item 4 of the table in subsection (1) as soon as possible after the rules are made; and

- (b) report the Committee's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.
- (4) If the Committee's report on a review of the rules is tabled in a House of the Parliament:
- (a) during the applicable disallowance period for that House; and
  - (b) on or after the eighth sitting day of the applicable disallowance period;
- then Part 2 of Chapter 3 of the *Legislation Act 2003* has effect, in relation to the rules and that House, as if each period of 15 sitting days referred to in that Part were extended in accordance with the following table.

| <b>Extension of applicable disallowance period</b> |   |  |
|--|---|--|
| <b>Item</b>  | <b>If the Committee's report is tabled in that House ...</b>        | <b>extend the period of 15 sitting days by ...</b> |
| 1  | on the fifteenth sitting day of the applicable disallowance period  | 8 sitting days of that House                       |
| 2  | on the fourteenth sitting day of the applicable disallowance period | 7 sitting days of that House                       |
| 3  | on the thirteenth sitting day of the applicable disallowance period | 6 sitting days of that House                       |
| 4  | on the twelfth sitting day of the applicable disallowance period    | 5 sitting days of that House                       |
| 5  | on the eleventh sitting day of the applicable disallowance period   | 4 sitting days of that House                       |
| 6  | on the tenth sitting day of the applicable disallowance period      | 3 sitting days of that House                       |
| 7  | on the ninth sitting day of the applicable disallowance period      | 2 sitting days of that House                       |
| 8  | on the eighth sitting day of the applicable disallowance period     | 1 sitting day of that House                        |

- (5) The ***applicable disallowance period*** for a House of the Parliament means the period of 15 sitting days of that House after the rules, or

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a copy of the rules, was laid before that House in accordance with section 38 of the *Legislation Act 2003*.

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

A person may communicate or otherwise deal with scheme information if:

- (a) the person obtains the information in the person's capacity as a person, or as an employee or official of a person, to whom information is communicated under this Division (including this section); and
- (b) the person communicates or otherwise deals with the information for the purposes for which the information was obtained by the person to whom it was communicated.

**55 Authorisation—information publicly available**

A person may communicate or otherwise deal with scheme information if the information has already been communicated or made available to the public with the authority of the Commonwealth (including under section 43 (certain information to be made publicly available) or 69 (annual report)).



## **Part 5—Enforcement**

### **56 Simplified outline of this Part**

It is a criminal offence for a person who is liable to register not to be registered under the scheme.

Criminal offences also apply for failing to fulfil responsibilities under the scheme or providing false or misleading information in purported fulfilment of responsibilities, and for destroying records.

It is also a criminal offence not to comply with a notice from the Secretary requiring information in relation to the scheme.

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

*Intentional omission to apply or renew knowing required to do so, and registrable activity undertaken*

- (1) A person commits an offence if:
- (a) the person knows that the person is required:
    - (i) to apply for registration under the scheme in relation to a foreign principal by the end of a period; or
    - (ii) to renew the person's registration under the scheme in relation to a foreign principal by the end of a period; and
  - (b) the person intentionally omits to do so; and
  - (c) the person undertakes an activity on behalf of the foreign principal after the end of the period; and
  - (d) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 5 years.

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*Intentional omission to apply or renew reckless as to whether required to do so, and registrable activity undertaken*

- (2) A person commits an offence if:
- (a) the person is required:
    - (i) to apply for registration under the scheme in relation to a foreign principal by the end of a period; or
    - (ii) to renew the person's registration under the scheme in relation to a foreign principal by the end of a period; and
  - (b) the person intentionally omits to do so; and
  - (c) the person undertakes an activity on behalf of the foreign principal after the end of the period; and
  - (d) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 3 years.

*Reckless omission to apply or renew knowing required to do so, and registrable activity undertaken*

- (3) A person commits an offence if:
- (a) the person knows that the person is required:
    - (i) to apply for registration under the scheme in relation to a foreign principal by the end of a period; or
    - (ii) to renew the person's registration under the scheme in relation to a foreign principal by the end of a period; and
  - (b) the person is reckless as to whether the person has omitted to do so; and
  - (c) the person undertakes an activity on behalf of the foreign principal after the end of the period; and
  - (d) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 3 years.

*Reckless omission to apply or renew reckless as to whether required to do so, and registrable activity undertaken*

- (3A) A person commits an offence if:
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- (a) the person is required:
  - (i) to apply for registration under the scheme in relation to a foreign principal by the end of a period; or
  - (ii) to renew the person's registration under the scheme in relation to a foreign principal by the end of a period; and
- (b) the person is reckless as to whether the person has omitted to do so; and
- (c) the person undertakes an activity on behalf of the foreign principal after the end of the period; and
- (d) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 2 years.

*Intentional or reckless omission to apply or renew whether or not registrable activity undertaken*

- (4) A person commits an offence if:
  - (a) the person knows that the person is required:
    - (i) to apply for registration under the scheme in relation to a foreign principal by the end of a period; or
    - (ii) to renew the person's registration under the scheme in relation to a foreign principal by the end of a period; and
  - (b) the person intentionally omits, or is reckless as to whether the person has omitted, to do so.

Penalty: Imprisonment for 12 months.

### **57A Giving notice of end of liability to register while still liable to register**

*Notice given knowing arrangement still exists, and registrable activity undertaken*

- (1) A person commits an offence if:
  - (a) the person gives the Secretary a notice under section 31 (notice of end of liability to register) for the person's

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registration under the scheme in relation to a foreign principal; and

- (b) at the time the person does so a registrable arrangement exists between the person and the foreign principal; and
- (c) the person knows that the registrable arrangement will still be in existence on the day specified in the notice under subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease; and
- (d) the person undertakes an activity on behalf of the foreign principal after that day; and
- (e) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 5 years.

*Notice given reckless as to whether arrangement still exists, and registrable activity undertaken*

- (2) A person commits an offence if:
  - (a) the person gives the Secretary a notice under section 31 (notice of end of liability to register) for the person's registration under the scheme in relation to a foreign principal; and
  - (b) at the time the person does so a registrable arrangement exists between the person and the foreign principal; and
  - (c) the registrable arrangement will still be in existence on the day specified in the notice under subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease; and
  - (d) the person undertakes an activity on behalf of the foreign principal after that day; and
  - (e) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 3 years.

*Notice given knowing arrangement still exists, whether or not registrable activity undertaken*

- (3) A person commits an offence if:

- (a) the person gives the Secretary a notice under section 31 (notice of end of liability to register) for the person's registration under the scheme in relation to the foreign principal; and
- (b) at the time the person does so a registrable arrangement exists between the person and the foreign principal; and
- (c) the person knows that the registrable arrangement will still be in existence on the day specified in the notice under subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease.

Penalty: Imprisonment for 12 months.

*Notice given reckless as to whether arrangement still exists, whether or not registrable activity undertaken*

- (4) A person commits an offence if:
  - (a) the person gives the Secretary a notice under section 31 (notice of end of liability to register) for the person's registration under the scheme in relation to the foreign principal; and
  - (b) at the time the person does so a registrable arrangement exists between the person and the foreign principal; and
  - (c) the registrable arrangement will still be in existence on the day specified in the notice under subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease.

Penalty: Imprisonment for 6 months.

## **58 Failure to fulfil responsibilities under the scheme**

*Failure to fulfil reporting responsibility*

- (1) A person commits an offence if:
  - (a) the person is required to give a notice under a provision of Division 2 of Part 3 (reporting to the Secretary); and
  - (b) the person fails to give the notice in accordance with the provision.

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Penalty: 60 penalty units.

*Failure to fulfil responsibility to disclose in communications activity*

- (2) A person commits an offence if:
- (a) the person is required to make a disclosure in accordance with the rules under section 38 (disclosure in communications activity); and
  - (b) the person fails to make the disclosure in accordance with the rules.

Penalty: 60 penalty units.

*Failure to keep records*

- (3) A person commits an offence if:
- (a) the person is required to keep records of a matter under section 40 (keeping records) for a period; and
  - (b) the person fails to do so.

Penalty: 60 penalty units.

**59 Failure to comply with notice requiring information**

- (1) A person commits an offence if:
- (a) the person is given a notice under section 45 or 46; and
  - (b) the person fails to comply with the notice:
    - (i) by the end of the period specified in the notice; or
    - (ii) if the Secretary extends that period—by the end of the extended period.

Note: A notice given under section 45 or 46 does not override certain privileges and immunities (see section 9A).

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if:
- (a) the person fails to comply with the notice only because the person does not provide the information or a document within the applicable period; and

- (b) the person took all reasonable steps to provide the information or document within that period; and
- (c) the person provides the information or document as soon as practicable after the end of that period.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

## **60 False or misleading information or documents**

### *Offence*

- (1) A person commits an offence if:
  - (a) the person gives information or produces a document to the Secretary; and
  - (b) the person does so in response to a notice given to the person under section 45 (notice requiring information to satisfy Secretary whether person is liable to register) or 46 (notice requiring information relevant to scheme); and
  - (c) the person does so knowing that:
    - (i) the information or document is false or misleading; or
    - (ii) the information omits any matter or thing without which the information is misleading.

Penalty: Imprisonment for 3 years.

### *Defence—not material*

- (2) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if the information or document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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### *Defence—not informed of offence*

- (4) Subsection (1) does not apply if, before the person gave the information or produced the document to the Secretary, the Secretary did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (5) For the purposes of subsection (4), it is sufficient if the following form of words is used: “Giving false or misleading information or documents is an offence”.

### *Defence—statement about false or misleading document*

- (6) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

## **61 Destruction etc. of records**

A person commits an offence if:

- (a) under section 40, a registrant is required to keep records (a *scheme record*); and
- (b) the person (whether or not the registrant) does an act, or omits to do an act; and
- (c) the person does the act, or omits to do the act, with the intention of avoiding or defeating the object of this Act or any element of the scheme; and
- (d) the act or omission results in:



- (i) damage to, or the destruction of, a scheme record; or
- (ii) the concealment of a scheme record; or
- (iii) the registrant being prevented from keeping scheme records.

Penalty: Imprisonment for 2 years.

### **61A Geographical jurisdiction of offences**

- (1) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against this Part if, at the time of the conduct constituting the offence, the defendant was a former Cabinet Minister or a recent designated position holder.
- (2) Section 14.1 of the *Criminal Code* (standard geographical jurisdiction) applies to any other offence against this Part.

## Part 6—Miscellaneous

### 62 Simplified outline of this Part

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

There is also a requirement for 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

- (1) The scheme applies to a partnership as if the partnership were a legal person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership under the scheme is imposed on each partner instead, but may be discharged by any of the partners.
- (3) An offence against this Act (including an offence against Chapter 7 of the *Criminal Code* in relation to this Act) that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

- (4) For the purposes of the scheme, a change in the composition of a partnership does not affect the continuity of the partnership.

## 65 Treatment of other unincorporated bodies

The scheme 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 for that kind of person.

## 66 Approvals

The Secretary may, in writing, approve:

- (a) a form (an **approved form**) for the purposes of a provision of this Act; and
- (b) a manner (an **approved manner**) for giving a notice or renewal under this Act.

## 67 Delegations

- (1) Subject to subsections (1A) and (1B), the Secretary may, in writing, delegate all or any of his or her functions or powers under this Act to:
- (a) an SES employee, or an acting SES employee, in the Department; or
  - (b) an APS employee who holds, or is acting in, an Executive Level 2 or equivalent position in the Department.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (1A) The Secretary must not delegate the Secretary's functions or powers under any of the following provisions:
- (a) section 14B (issuing provisional transparency notices);
  - (b) section 14E (varying or revoking transparency notices).
- (1B) The Secretary may only delegate the Secretary's functions or powers under the following provisions to a person mentioned in paragraph (1)(a):
- (a) section 43 (certain information to be made publicly available);

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- (b) section 45 (notice requiring information to satisfy Secretary whether person is liable to register under the scheme);
  - (c) section 46 (notice requiring information relevant to scheme);
  - (d) subsection 53(1) (authorisation for Secretary to communicate scheme information).
- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary.

## 68 Agreements

The Secretary may, on behalf of the Commonwealth:

- (a) enter into a written agreement with a person for the person to perform services in relation to the scheme; and
- (b) make payments to the person in accordance with any such agreement.

## 69 Annual report

- (1) The Secretary must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operation of the scheme in relation to the financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*.

- (2) The report must include the following matters in relation to the financial year:
- (a) the number of new registrations;
  - (b) the number of registrations that ended;
  - (c) the number of notices given to the Secretary under Division 2 of Part 3 (reporting to the Secretary);
  - (d) a statement as to whether the Secretary has complied with section 42 (requirement to keep a register);
  - (e) the number of provisional transparency notices issued;
  - (f) the number of submissions made in response to invitations prepared under subsection 14C(1) for the subjects of provisional transparency notices;

- (g) the number of transparency notices varied or revoked;
  - (h) the number of notices issued under section 45 (notice requiring information to satisfy Secretary whether person is liable to register under the scheme);
  - (i) the number of notices issued under section 46 (notice requiring information relevant to scheme);
  - (j) the number of documents produced to the Secretary in compliance with notices issued under section 46;
  - (k) the number of occasions on which the Secretary or a scheme official communicates scheme information to a person in reliance on the authorisation in section 52 (purposes of scheme) or 53 (other purposes) (whether or not any other authorisation is also relied on);
  - (l) a list of Departments, agencies, authorities or Australian police forces to which scheme information has been communicated in reliance on the authorisation in section 52 or 53 (whether or not any other authorisation is also relied on);
  - (m) the number of persons charged with offences under Part 5 (enforcement);
  - (n) the number of proceedings before the courts in relation to the scheme;
  - (o) any other matters prescribed by the rules for the purposes of this section.
- (3) Despite subsection (2), the report must not include information that the Secretary is satisfied:
- (a) is commercially sensitive; or
  - (b) affects national security; or
  - (c) is a kind of information prescribed by the rules for the purposes of subsection 43(2).

Note: A registrant who considers that information is commercially sensitive can specify this when giving the information.

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

The Parliamentary Joint Committee on Intelligence and Security must:

- (a) begin a review of the operation, effectiveness and implications of the scheme by the third anniversary of the day this Act commences; and
- (b) report the Committee's comments and recommendations to each House of the Parliament as soon as practicable after completing the review.

**71 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (3) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

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*[Minister's second reading speech made in—  
House of Representatives on 7 December 2017  
Senate on 27 June 2018]*

(285/17)

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