

# EXPLANATORY STATEMENT

Issued by Authority of the Attorney-General

*Foreign Influence Transparency Scheme Act 2018*

*Foreign Influence Transparency Scheme Rules 2018*

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## **Authority**

The *Foreign Influence Transparency Scheme Rules 2018* (the Rules) are made under section 71 of the *Foreign Influence Transparency Scheme Act 2018* (the Act), for the purposes of sections 30 and 43 of the Act. The Act establishes the Foreign Influence Transparency Scheme (the scheme). The objective of the scheme is to provide transparency to the public and decision makers about the nature, level and extent of foreign influence on Australia's governmental and political processes.

Section 71 of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters that are required or permitted by the Act to be prescribed by the rules, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Division 4 of Part 2 of the Act sets out a number of exemptions from registering under the scheme. If any of the exemptions apply to an activity, then a person is not required to register under the scheme in relation to that activity, even if the activity would otherwise fall within one of the categories of registrable activities set out in Division 3 of Part 2 of the Act.

The categories of exemptions are set out in sections 24 to 29F of the Act. Section 30 provides that a person is also 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 section 30. This provides for flexibility in the operation of the scheme, and ensures that the scheme can adapt and be responsive to new scenarios in which an exemption may be justified.

Section 43 of the Act relates to information about the scheme that is to be made publically available. Subsection 43(1) requires that the Secretary 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 paragraph 43(1)(c).

Subsection 43(3) of the Act provides that the rules may prescribe circumstances in which the Secretary is to remove publicly available information from the website.

## **Purpose and operation of the Rules**

The Rules will prescribe matters for the purposes of sections 30 and 43 of the Act.

### Section 30

The following matters are prescribed for the purposes of section 30 of the Act:

- an exemption in relation to an activity undertaken by a person in their official capacity as an employee under the *Members of Parliament (Staff) Act 1984* or as a consultant engaged under that Act, and
- an exemption in relation to an activity undertaken by a person in their official capacity as a Commonwealth public official.

In both these instances, the exemption only applies if the identity of the foreign principal is apparent to all persons with whom the person is dealing or disclosed to them.

These additional exemptions recognise that these particular categories of persons are likely to regularly come into contact with and engage with foreign principals in the ordinary course of their duties and on occasion will be required to undertake activities that may otherwise fall within the definition of a registrable activity under the Act. The circumstances to be prescribed by the Rules for the purposes of section 30 of the Act ensure that the affected persons are able to undertake their ordinary, day to day duties of providing support and advice to Government and other key decision makers without inadvertently being subject to an obligation to register under the scheme.

### Section 43

The Rules prescribe the following matters for the purposes of paragraph 43(1)(c) and subsection 43(3) of the Act, respectively:

- Information to be made publicly available in relation to each person registered under the scheme, additional to what is already required by paragraphs 43(1)(a) and (b) of the Act, and
- Circumstances in which information is to be removed from the website.

To achieve the transparency objective of the scheme, it is essential that information be made publicly available. This ensures members of the Australian Parliament, decision makers in political and governmental processes, and the Australian public have visibility of the forms and sources of foreign influence in Australia. Access to such information will better position both the government and the public to understand and assess the actions of those registered under the scheme.

These Rules are central to achieving the transparency objective of the scheme, as they provide that further specific information will be made publicly available in relation to each person registered. The additional information relates to the persons registered, the foreign principal in relation to whom they are registered, details of the relationship between the registrant and foreign principal, and details of the activities being undertaken or proposed to be undertaken. This information will be drawn from the description provided by registrants in their application for registration under the scheme or from information provided by registrants when notifying of changes or updates to their registration information. The requirement that this information be made publicly available is subject to the limitation in subsection 43(2) of the Act, which provides that the website must not include information that the Secretary is satisfied is commercially sensitive, affects national security, or is of a kind prescribed by the rules for the purposes of subsection 43(2).

The information prescribed by the Rules is necessary as it ensures that registrants are able to be identified (for example, if they operate under a different name) and that the public understands why particular persons are registered under the scheme (such as their status as a former senior public position holder). The information is also necessary as it ensures that the

circumstances in which registrable activities are undertaken is apparent, including the kinds of relationships in existence between foreign principals and persons registered under the scheme.

The information to be made publicly available ensures that the public and decision makers can properly understand the manner in which foreign influence is exerted in Australian government and political processes. Providing detailed information about registrants, their activities and the foreign principals on whose behalf they undertake the activities ensures that the transparency facilitated by the scheme is meaningful and helpful to the public and decision makers.

These Rules also provide that the Secretary of the Attorney-General's Department is to remove information from the public register where satisfied that the information is not true or was provided in relation to an application for registration under the scheme that was fraudulently made. This provides reassurance to the public about the integrity of the public register and that the information made publicly available can be relied upon.

## **OTHER ISSUES**

### **More information**

An explanation of the provisions of the Rules is provided in [Attachment A](#).

### **Regulatory impact analysis**

The Office of Best Practice Regulation (OBPR) in the Department of the Prime Minister and Cabinet considers this proposal to be machinery in nature and has confirmed that a Regulation Impact Statement is not required. The OBPR ID is 24619.

### **Statement of compatibility with human rights**

A statement of compatibility with human rights has been prepared for the Rules and is provided in [Attachment B](#).

### **Matter incorporated by reference**

These Rules do not apply, adopt or incorporate other matters by reference.

### **Consultation**

Before the Rules were made, the Attorney-General considered the general obligation to consult imposed by section 17 of the *Legislation Act 2003* (the Legislation Act). The Attorney-General was satisfied that consultation was appropriate and reasonably practicable to be undertaken. The Attorney-General's Department undertook extensive consultation with government and non-government stakeholders on the Rules as part of the implementation of the scheme. An exposure draft of the Rules made pursuant to section 43 was also published for several weeks on the website of the Attorney-General's Department.

Government agencies consulted on the Rules include: the Department of Finance, the Department of Communications and the Arts, the Department of the Prime Minister and Cabinet, the Department of Home Affairs, the Australian Federal Police, the Treasury, the Australian Charities and Not-for-profits Commission, the Department of Education and Training, the Department of Defence, the Department of Foreign Affairs and Trade, and the Department of Industry, Innovation and Science. Non-government stakeholders consulted on

the Rules included representatives of media organisations, lobbying firms and peak bodies, and other persons who may have registration obligations under the scheme. The Parliamentary Joint Committee on Intelligence and Security was also consulted during the implementation of the scheme, which included the draft Rules. Feedback provided from stakeholders was considered and, where appropriate, incorporated into the finalised Rules.

## NOTES ON PROVISIONS

### Part 1 – Preliminary

#### Section 1 – Name

This section provides that the name of this instrument is the *Foreign Influence Transparency Scheme Rules 2018*.

#### Section 2 – Commencement

This section provides for the whole of the Rules to commence the later of the commencement of the *Foreign Influence Transparency Scheme Act 2018*, or the start of the day after the Rules are registered.

#### Section 3 – Authority

This section provides that the Rules are made under the *Foreign Influence Transparency Scheme Act 2018*.

#### Section 4 – Definitions

The note at the beginning of section 4 states that a number of expressions used in this instrument are defined in the Act. The note is intended to provide clarity as to the meaning of these terms as used in the Rules.

This section specifies the meaning of a number of terms used in the Rules.

*ABN* has the same meaning as in the *A New Tax System (Australian Business Number) Act 1999*. Section 41 of this Act provides that *ABN (Australian Business Number)* for an entity means the entity's ABN as shows in the Australian Business Register.

*Act* means the *Foreign Influence Transparency Scheme Act 2018*.

### Part 2 – Registration under the scheme

#### Section 5 – Exemptions: prescribed circumstances

This section prescribes an additional exemption in relation to activities undertaken on behalf of a foreign principal by a person employed under the *Members of Parliament (Staff) Act 1984*, a consultant engaged under that Act or a Commonwealth public official. This exemption recognises that these particular categories of persons will regularly come into contact and engage with foreign principals in the ordinary course of their duties and on occasion will be required to undertake activities that may fall within the definition of a registrable activity under the Act. Having such an exemption in place will ensure that these persons are able undertake their day to day duties of providing support and advice to Government and other key decision makers without inadvertently being subject to an obligation to register under the scheme.

Subsection 5(a) provides that the exemption applies to the following categories of persons:

- a person who is employed under the *Members of Parliament (Staff) Act 1984*,

- a consultant engaged under the *Members of Parliament (Staff) Act 1984*, and
- a Commonwealth public official.

Paragraphs 5(a)(i) and (ii) capture persons employed under the *Members of Parliament (Staff) Act 1984* (MoPS Act). It will also capture consultants engaged by Ministers under section 4 of the MoPS Act. Under section 4 of the MoPS Act, a consultant may include a natural person, body corporate or partnership.

Subparagraph 5(a)(iii) refers to a ‘Commonwealth public official’. This term is defined in section 10 of the Act as having the same meaning as in the *Criminal Code Act 1995*. The Dictionary to the Criminal Code defines a Commonwealth public official to mean any of the following:

- the Governor-General
- a person appointed to administer the Government of the Commonwealth under section 4 of the Constitution
- a Minister
- a Parliamentary Secretary
- a member of either House of the Parliament
- an individual who holds an appointment under section 67 of the Constitution
- the Administrator, an Acting Administrator, or a Deputy Administrator, of the Northern Territory
- a Commonwealth judicial officer
- an APS employee
- an individual employed by the Commonwealth otherwise than under the Public Service Act 1999; or
- a member of the Australian Defence Force
- a member or special member of the Australian Federal Police
- an individual (other than an official of a registered industrial organisation) who holds or performs the duties of an office established by or under a law of the Commonwealth, other than:
  - the Corporations (Aboriginal and Torres Strait Islander) Act 2006;
  - the Australian Capital Territory (Self-Government) Act 1988
  - the Corporations Act 2001
  - the Norfolk Island Act 1979
  - the Northern Territory (Self-Government) Act 1978
- an officer or employee of a Commonwealth authority
- an individual who is a contracted service provider for a Commonwealth contract
- an individual who is an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract
- an individual (other than an official of a registered industrial organisation) who exercises powers, or performs functions, conferred on the person by or under a law of the Commonwealth, other than:
  - the Corporations (Aboriginal and Torres Strait Islander) Act 2006; or
  - the Australian Capital Territory (Self-Government) Act 1988; or

- the Corporations Act 2001; or
- the Norfolk Island Act 1979; or
- the Northern Territory (Self-Government) Act 1978; or
- a provision specified in the regulations; or
- an individual who exercises powers, or performs functions, conferred on the person under a law in force in the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands (whether the law is a law of the Commonwealth or a law of the Territory concerned, or
- the Registrar, or a Deputy Registrar, of Aboriginal and Torres Strait Islander Corporations.

Subsection 5(b) provides that the exemption only applies where the activity is undertaken by the person within the scope of the functions that the person undertakes in his or her capacity as either a *Members of Parliament (Staff) Act 1984* employee or consultant, or as a Commonwealth public official.

Subsection 5(b) limits the application of the exemption to ensure that it only covers activities which are undertaken within the scope of the person's usual or ordinary duties. Activities which are undertaken outside of this scope may still require registration under the scheme and a person will not be exempt from registering merely because they are one of the types of persons identified in subsection 5(a).

Subsection 5(c) provides that the exemption only applies if, at the time the activity is undertaken, the identity of the foreign principal is either apparent to all persons with whom the person is dealing or is disclosed to them.

The requirement prescribed by subsection 5(c) ensures that an appropriate level of transparency is required by MoPS staff, consultants engaged under the MoPS Act and Commonwealth public officials who may undertake activities in the course of their ordinary duties that would otherwise be registrable under the scheme. It achieves this by ensuring that the activities are clearly linked to the foreign principal, and that the identity of the foreign principal is apparent in their dealings with Members of Parliament and other key decision makers.

### **Part 3– Register of scheme information**

#### **Section 6 – Information to be made publicly available on website**

This section prescribes information in relation to each person registered in relation to a foreign principal that is to be made publicly available on a website, for the purposes of paragraph 43(1)(c) of the Act. This is further to the information that is already required to be made publicly available by paragraphs 43(1)(a) and (b) of the Act. The information to be made publicly available will be drawn from the person's application for registration under the scheme or from information provided by the person when notifying of changes or updates to their registration information.

Subsection 6(a) provides that the trading name of the person (if applicable) is to be made publicly available. This will assist in ensuring that the person can be identified.

Subsection 6(b) provides that the ABN, or foreign equivalent, of the person (if applicable) is to be made publicly available. This will assist in ensuring that the person can be identified.

Subsection 6(c) provides that any other names by which the person is known is to be made publicly available. This will assist in ensuring that the person can be identified.

Subsection 6(d) provides that, if the person is an individual, the occupation of the person is to be made publicly available. This will assist in ensuring that the person can be identified.

Subsection 6(e) provides that, if the person is a former Cabinet Minister, that fact is to be made publicly available. This is necessary to ensuring that the reason the person is required to register under the scheme is apparent. As stated in the Explanatory Memorandum to the Act, it is in the public interest to know when former Cabinet Ministers undertake activities on behalf of a foreign principal following the cessation of their role and it is appropriate that these individuals are held to a high degree of accountability.

Subsection 6(f) provides that, if the person is a recent designated position holder, that fact is to be made publicly available. This is necessary to ensuring that the reason the person is required to register under the scheme is apparent. Section 10 of the Act defines *designated position holder* to mean:

- a Minister; or
- a member of the Parliament; or
- a person employed under section 13 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
- an Agency Head (within the meaning of the *Public Service Act 1999*); or
- a deputy agency head (however described); or
- 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
- the holder of an office of the Commonwealth as an Ambassador or High Commissioner, in a country or place outside Australia.

Section 10 of the Act defines *recent designated position holder* as a person who, at a particular time, was a designated position holder at any time in the 15 years before a particular time, and who is not at the particular time a designated position holder. As stated in the Explanatory Memorandum to the Act, it is in the public interest to know when recent designated position holders undertake activities on behalf of a foreign principal following the cessation of their role and it is appropriate that these individuals are held to a high degree of accountability.

Subsection 6(g) provides that the trading name of the foreign principal (if applicable) is to be made publicly available. This will assist in ensuring that the foreign principal can be identified.

Subsection 6(h) provides that the ABN, or foreign equivalent, of the foreign principal (if applicable) is to be made publicly available. This will assist in ensuring that the foreign principal can be identified.



Subsection 6(i) provides that if the foreign principal is an individual the individual's title (including any post-nominals) and any other names by which the individual is known will be made publicly available. This may include the person's name in languages other than English. This will assist in ensuring that the foreign principal can be identified.

Subsection 6(j) provides that the name of the foreign country that the foreign principal is part of or related to is to be made publicly available. This is necessary to ensuring that the sources of foreign influence exerted in Australia's governmental and political processes are transparent. While in some instances the relevant foreign country may be clear from the name of the foreign principal (such as where the foreign principal is a foreign government or foreign political organisation) it may be less clear where the foreign principal is a foreign government related entity or foreign government related individual.

Subsection 6(k) provides that the type of foreign principal is to be made publicly available. This refers to the definition of foreign principal in the Act, which provides that a foreign principal may be a foreign government, a foreign political organisation, a foreign government related entity, or a foreign government related individual. This will assist in ensuring that the reason a particular entity is a foreign principal for the purposes of the Act is clear to the decision makers and the public, including other potential registrants under the scheme.

Subsection 6(l) provides that a description of the registrable activities the person undertakes, has undertaken or proposes to undertake on behalf of the foreign principal is to be made publicly available. The activities that are registrable under the scheme are identified in Division 3 of the Part 2 of the Act (registrable activities). Information about each person's registrable activities will be drawn from the description provided by the person in their application for registration under the scheme or from information provided by the person when notifying of changes or updates to their registration information.

Making this information publicly available is intended to ensure that there is more than a high level of detail about the persons' registrable activities, and that there is transparency about the substance of the activities that are registrable under the scheme. For example, this may include the format and frequency of communications activities undertaken, the recipient of disbursements, or the type of lobbying undertaken (such as the person or group subject to the lobbying).

Subsection 6(m) provides that the date, or period over which, the person undertakes, has undertaken or proposes to undertake the registrable activities on behalf of the foreign principal is to be made publicly available. Making this information publicly available will ensure that the registrable activities can be put in their broader context, including whether they were undertaken in relation to a federal election or referendum, or at times aligning with other governmental or political processes.

Subsection 6(n) provides that it is to be made publicly available whether the person undertakes, has undertaken or proposes to undertake the registrable activities on behalf of the foreign principal:

- (i) under an arrangement with the foreign principal; or
- (ii) in the service of the foreign principal; or
- (iii) on the order or at the request of the foreign principal; or
- (iv) under the direction of the foreign principal.

Subsection 6(o) provides that a description of any arrangement, order, request or direction mentioned in paragraph 6(n) is to be made publicly available. This information will be drawn from the description provided by the person in their application for registration under the scheme or from information provided by the person when notifying of changes or updates to their registration information.

Making the information prescribed by subsections 6(n) and (o) publicly available is necessary to provide transparency about the types of relationships through which foreign influence is exerted over Australian governmental and political processes. For example, this may include whether there is a contract between the foreign principal and the person registered under the scheme, or a less formal arrangement, and how such an arrangement meets the relevant criteria in the Act.

It is relevant to note that the requirement to make the information publicly available in accordance with the Act and the Rules is limited by subsection 43(2) which provides that the website must not include information that the Secretary is satisfied is commercially sensitive, affects national security, or is of a kind prescribed by the rules for the purposes of subsection 43(2). Persons registering under the scheme will be asked to indicate when providing information if they consider that the information they are providing is commercially sensitive.

Subsection 6(p) provides that if subparagraph 6(n)(ii) applies to the person (that is, if the relevant relationship is one in which the person undertook, undertakes or proposes to undertake the registrable activities in the service of the foreign principal), a description of the relationship between the person and the foreign principal is to be made publicly available. As with the previous subsection, this information will be drawn from the description provided by the person in their application for registration under the scheme or from information provided by the person when notifying of changes or updates to their registration information. Making this information publicly available is necessary to provide transparency about the types of relationships through which foreign influence is exerted over Australian governmental and political processes.

## **Section 7 – Removal of publicly available information from website**

This section prescribes that, for the purposes of subsection 43(3) of the Act, the Secretary is to remove publicly available information from the website in the following circumstances:

- (a) the Secretary is satisfied that the information is not true;
- (b) the Secretary is satisfied that the information was provided in relation to an application for registration under the scheme that was fraudulently made.

This is intended to ensure that if the Secretary becomes aware that it is likely that information on the public register for the scheme is untrue or was provided in relation to a fraudulent application for registration, and is satisfied that either of these circumstances applies, the Secretary must remove the information from the public register. While section 44 of the Act already provides the Secretary with the power to correct or update information in the register, prescribing circumstances in which the Secretary is required to remove publicly available information from the website provides an additional guarantee of the integrity of the public register and reassurance to the public that the information made publicly available can be relied upon.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Foreign Influence Transparency Scheme Rules 2018**

The rules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Rules**

The *Foreign Influence Transparency Scheme Rules 2018* (the Rules) are made under section 71 of the *Foreign Influence Transparency Scheme Act 2018* (the Act), for the purposes of section 43 of the Act. The Act establishes the Foreign Influence Transparency Scheme (the scheme). The objective of the scheme is to provide transparency to the public and decision makers about the nature, level and extent of foreign influence on Australia's governmental and political processes.

Section 71 of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters that are required or permitted by the Act to be prescribed by the rules, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Division 4 of Part 2 of the Act sets out a number of exemptions for registering under the scheme. If any of the exemptions apply, then a person will not be required to register under the scheme in relation to that activity, even if the activity would otherwise fall within one of the categories of registrable activities set out at Division 3 of Part 2 of the Act. Section 30 provides that a person is also 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 section 30.

Section 43 of the Act relates to information about the scheme that is to be made publically available. Subsection 43(1) requires that the Secretary 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 paragraph 43(1)(c).

Subsection 43(3) of the Act provides that the rules may prescribe circumstances in which the Secretary is to remove publicly available information from the website.

The Rules prescribe the following matters for the purposes of section 30 of the Act:

- an exemption in relation to an activity undertaken by a person in their official capacity as an employee under the *Members of Parliament (Staff) Act 1984* or as a consultant engaged under that Act, and  
an exemption in relation to an activity undertaken by a person in their official capacity as a Commonwealth public official.

In both these instances, the exemption only applies if the fact that the person is undertaking the activity on behalf of a foreign principal, and the identity of the foreign principal, are apparent to all persons with whom the person is dealing or disclosed to them.

The Rules also prescribe the following matters for the purposes of paragraph 43(1)(c) and subsection 43(3) of the Act, respectively:

- Information to be made publicly available in relation to each person registered under the scheme, additional to what is already required by paragraphs 43(1)(a) and (b) of the Act, and
- Circumstances in which information is to be removed from the website.

### **Human rights implications**

The Rules engage the right to privacy as contained in article 17 of the International Covenant on Civil and Political Rights (ICCPR). However, the scheme as a whole promotes the following rights:

- the right to opinion and freedom of expression as contained in article 19; and
- the right to freedom of association as contained in article 22; and
- the right to take part in public affairs and elections as contained in article 25.

How the scheme engages with each of these rights is examined in detailed in the Explanatory Memorandum for the *Foreign Influence Transparency Scheme Bill 2017*, considered by the Parliamentary Joint Committee earlier this year.

### *Legitimate Objective of the Rules*

Under international human rights law, any limitation on rights and freedoms needs to be reasonable, necessary and proportionate to the pursuit of a legitimate objective. Further, for an objective to be considered “legitimate”, it must address a ‘pressing or substantial concern, and not simply seek an outcome regarded as desirable or convenient’. The objective of the Act under which these Rules are made, is to facilitate transparency for the public and decision makers about the nature, level and extent of foreign influence in Australia’s political and governmental processes. Importantly, the Act aims to solve a pressing or substantial concern within Australia, as foreign influence in governmental and political processes and decision making can have serious implications for national policy, undermining the ability of the Australian public and decision makers in government to make fully informed decisions.

It is essential that all arms of government are able to perform their functions. This ensures the proper functioning of Australia’s representative democracy and its decision making processes. The Rules promote the legitimate objective the Act by ensuring that staff members employed by Members of Parliament, consultants engaged by Ministers on behalf of the Commonwealth and Commonwealth public officials are able to perform their ordinary duties, including interacting with foreign principals from time to time, so as to properly advise Government and key decision makers, without attracting a registration obligation under the scheme. Prescribing this in the Rules is reasonable and necessary to support the objectives of the scheme.

The Rules promote the legitimate transparency objective of the Act by making information publically available on the register which demonstrates the form and source of foreign influence being exerted in Australia's political and governmental processes and the nature of the relationships through which the influence is exerted. These requirements are reasonable, necessary and proportionate to the transparency objective of the scheme, as they address pressing concerns and enhance transparency in Australia's political and governmental processes and decision making.

### Right to privacy

Pursuant to Article 17 of the ICCPR, no-one should be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour or reputation. The right to privacy may be limited when the limitation is lawful, not arbitrary, and when it is reasonable, necessary and proportionate to achieve a legitimate objective.

The Rules impose a limitation on the right to privacy by requiring information about the registrant and the foreign principal to be made publically available.

Publishing information about persons registered under the scheme is clearly in pursuit of the legitimate objective of promoting transparency and awareness of the nature, level and extent of foreign influence in Australia's political and governmental processes. Making this information publicly available satisfies the fundamental transparency objective underlying the scheme.

The type of information that can be published under section 5 of the Rules is rationally connected to the objectives of the scheme, and is necessary to achieving these legitimate objectives. The publicly available information is only that which is necessary to identify a registrant, the relevant foreign principal and the relationship with the foreign principal, and the types of activities being undertaken as a result of the relationship. The information prescribed does not go beyond the point of necessity.

The information prescribed by the Rules to be made publicly available is a reasonable and proportionate restriction on the right to privacy. Firstly, as outlined above, the information to be published is only that necessary to identify a person registered, the foreign principal, and is directly relevant to their registrable activities.

Secondly, the publication of information is limited by several key safeguard mechanisms. For example, as per subsection 43(2) of the Act, the website must not include information that the Secretary is satisfied is commercially sensitive or affects national security. The collection and retention of information is carefully regulated, and the information which is prescribed to be made publically available is information which is essential to fulfil the fundamental transparency objective of the scheme. There are also processes to correct inaccurate information on the public register.

Therefore, to the extent that the scheme requires the publication of certain information about a registrant and a foreign principal, thus limiting their right to privacy, this limitation is considered reasonable, necessary and proportionate to the scheme's transparency objective.

### Human rights promoted by the Rules

*Right to opinion and freedom of expression, freedom of association and right to take part in public affairs and elections*

Article 19 of the ICCPR prescribes that everyone has the right to hold opinions without interference and has the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds. Further, article 25 of the ICCPR declares that every citizen should have the right and the opportunity to take part in the conduct of public affairs, to vote and to be elected at genuine periodic election.

The Rules protect and promote these rights to opinions, freedom of expression, and freedom of participation in public affairs because they help to create a political system that is transparent by making the sources of foreign influence being exerted in Australia's political and governmental processes visible. The Rules do not prohibit registrants from acting on behalf of foreign principals to undertake the activities that are registrable under the scheme (which are prescribed by the scheme); they are merely required to ensure, through registering with the scheme, that the fact that the activities are undertaken on behalf of a foreign principal for the purpose of political or governmental influence is transparent to the public and decision makers. Their activities continue as a legitimate form of activity, engaging the right to opinion and freedom of expression in Article 19 of the ICCPR and the right to take part in political affairs in Article 25 of the ICCPR.

Conclusion

The Rules are compatible with human rights because they promote and protect a number of rights, including; the right to hold an opinion, the right take part in public affairs and elections and the right to vote. To the extent that the Rules limit the right to privacy, the limitations are considered reasonable, necessary and proportionate to the transparency objective of the scheme. The Rules ultimately promote and protect government and public knowledge of the nature, level and extent of foreign influence in Australian federal political and governmental processes.