

# EXPLANATORY STATEMENT

Issued by Authority of the Attorney-General

*Foreign Influence Transparency Scheme Act 2018*

## ***Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Amendment Rules 2018***

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### **Authority**

The *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Amendment Rules 2018* (the Amendment Rules) are made under section 71 of the *Foreign Influence Transparency Scheme Act 2018* (the Act), for the purposes of section 38 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.

Section 38 of the Act requires a person who is registered in relation to communications activities on behalf of a foreign principal to make a disclosure about the foreign principal in accordance with the rules.

Subsection 38(1) of the Act provides that the disclosure requirement applies 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).

Subsection 38(2) of the Act provides that 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.

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

The Amendment Rules make minor amendments to section 7 of the *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018* (the FITS Rules), which commenced on 10 December 2018. The amendments address an oversight in the development of the FITS Rules.

The FITS Rules prescribe the form, manner and content of disclosures to be made by persons registered under the scheme when communicating to the public on behalf of a foreign principal, for the purposes of section 38 of the Act. Section 7 of the FITS Rules relates to the disclosure requirements applying to authorised political material.

Subsection 7(1) of the FITS Rules provides that for the purposes of paragraphs 38(2)(b) and (c) of the Act, section 7 applies if particulars relating to an instance of communications activity in column 1 of an item of the table in subsection 5(1) of the Rules are notified or announced in accordance with any of the following laws:

- Part XXA of the *Commonwealth Electoral Act 1918*
- Part IX of the *Referendum (Machinery Provisions) Act 1984*, and
- Subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*.

As explained in the Explanatory Statement for the FITS Rules, section 7 of the FITS Rules addresses circumstances in which instances of communications activity are subject to the disclosure requirements under the Act and requirements prescribed in any of the above listed laws. In these circumstances, an alternative, shorter disclosure requirement than would generally apply is prescribed. The alternative disclosure requirements ensure that the transparency objectives of the scheme are met, while minimising unnecessary duplication between different regulatory regimes.

The Amendment Rules add the following to the list above:

- Subsection 79A(2) of the *Australian Broadcasting Corporation Act 1983*, and
- Subsection 70A(2) of the *Special Broadcasting Service Act 1991*.

The amendments ensure that there is consistency in the disclosure requirements under the Act applying to the Australian Broadcasting Commission (ABC), the Special Broadcasting Service (SBS) and non-public broadcasters in relation to authorised political material. The amendments ensure that the original intention of section 7 of the FITS Rules is achieved.

## **OTHER ISSUES**

### **More information**

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

## **Matters incorporated by reference**

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

## **Consultation**

Before the Amendment 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 consulted the Department of Communications and the Arts on the Amendment Rules. Feedback provided was incorporated into the final version.

Extensive consultation was undertaken with government and non-government stakeholders in relation to the FITS Rules as part of the implementation of the scheme. The consultation undertaken is detailed in the Explanatory Statement for the FITS 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 (Disclosure in Communications Activity) Amendment Rules 2018*.

#### **Section 2 – Commencement**

This section provides for the whole of the Amendment Rules to commence the day after the instrument is registered.

#### **Section 3 – Authority**

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

#### **Section 4 – Definitions**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### **Schedule 1 – Amendments**

Schedule 1 of the Amendment Rules amends the *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018*.

#### **Section 1 – At the end of subsection 7(1)**

Section 1 adds the following two paragraphs to the end of subsection 7(1) of the *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018*:

- (d) subsection 79A(2) of the *Australian Broadcasting Corporation Act 1983*;
- (e) subsection 70A(2) of the *Special Broadcasting Service Act 1991*.

This means that the disclosure requirements prescribed by section 7 of the FITS Rules applies if particulars relating to an instance of communications activity in column 1 of an item of the table in subsection 5(1) of the FITS Rules are notified or announced in accordance with subsection 79A(2) of the *Australian Broadcasting Corporation Act 1983* and subsection 70A(2) of the *Special Broadcasting Service Act 1991*, as well as the laws already listed at paragraphs 7(1)(a) to (c) of the FITS Rules.

**Statement of Compatibility with Human Rights**

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

**Foreign Influence Transparency Scheme (Disclosure in Communications Activity)  
Amendment Rules 2018**

The Amendment 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 (Disclosure in Communications Activity) Amendment Rules 2018* (the Amendment Rules) are made under section 71 of the *Foreign Influence Transparency Scheme Act 2018* (the Act), for the purposes of section 38 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.

Section 38 of the Act requires a person who is registered in relation to communications activities on behalf of a foreign principal to make a disclosure about the foreign principal in accordance with the rules.

Subsection 38(1) of the Act provides that the disclosure requirement applies 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).

Subsection 38(2) of the Act provides that 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.

The Amendment Rules make minor amendments to section 7 of the *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018* (the FITS Rules), which commenced on 10 December 2018. The amendments address an oversight in the development of the FITS Rules.

The FITS Rules prescribe the form, manner and content of disclosures to be made by persons registered under the scheme when communicating to the public on behalf of a foreign principal, for the purposes of section 38 of the Act. Section 7 of the FITS Rules relates to the disclosure requirements applying to authorised political material.

Subsection 7(1) of the FITS Rules provides that for the purposes of paragraphs 38(2)(b) and (c) of the Act, section 7 applies if particulars relating to an instance of communications activity in column 1 of an item of the table in subsection 5(1) of the Rules are notified or announced in accordance with any of the following laws:

- Part XXA of the *Commonwealth Electoral Act 1918*
- Part IX of the *Referendum (Machinery Provisions) Act 1984*, and
- Subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*.

As explained in the Explanatory Statement for the FITS Rules, section 7 of the FITS Rules addresses circumstances in which instances of communications activity are subject to the disclosure requirements under the Act and requirements prescribed in any of the above listed laws. In these circumstances, an alternative, shorter disclosure requirement than would generally apply is prescribed. The alternative disclosure requirements ensure that the transparency objectives of the scheme are met, while minimising unnecessary duplication between different regulatory regimes.

The Amendment Rules add the following to the list above:

- Subsection 79A(2) of the *Australian Broadcasting Corporation Act 1983*, and
- Subsection 70A(2) of the *Special Broadcasting Service Act 1991*.

The amendments ensure that there is consistency in the disclosure requirements under the Act applying to the Australian Broadcasting Commission (ABC), the Special Broadcasting Service (SBS) and non-public broadcasters in relation to authorised political material. The amendments ensure that the original intention of section 7 of the FITS Rules is achieved.

### **Human rights implications**

The Amendment Rules engage the following rights as provided for in the International Covenant on Civil and Political Rights (ICCPR):

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

#### *Right to freedom of expression and the right to take part in public affairs (Articles 19 and 25)*

The right to take part in public affairs, as contained in article 25 of the ICCPR, includes the right to “take part in the conduct of public affairs, directly or through freely chosen representatives”. Article 19(1) of the ICCPR provides that everyone should have the right to hold opinions without interference, whereas article 19(2) states that the right to freedom of expression contains the right to seek, receive and impart information of all kinds using any type of media.

The Amendment Rules promote the right to freedom of expression and the right to participate in public affairs by ensuring there is consistency in the disclosure requirements applying to communications regardless of whether they are undertaken on a public or non-public broadcaster. The Amendment Rules ensure that the disclosure requirements applying for

communications of authorised political matter on the ABC and SBS are not too onerous or duplicative of matters already required to be disclosed under other legislation. The FITS Rules already provide this in relation to non-public broadcasters.

### Conclusion

The Amendment Rules are compatible with human rights because they promote human rights.