

To: Directors
Presidents – Constituent Bodies
CEOs – Constituent Bodies
Section Chairs
Chairs – National Criminal Law Committee

From: Arthur Moses SC, President

Date: 3 January 2019

Commencement of the Foreign Influence Transparency Scheme

Action Request

For noting and distribution to Constituent Body and Section members.

Key Issues

I write to advise that the Foreign Influence Transparency Scheme (**the scheme**) commenced on 10 December 2018. From this date, potential registrants will need to complete a registration form on the scheme's website and supply certain information and documents.

This memorandum seeks to raise awareness of the scheme to Law Council Constituent Bodies and Sections who may be affected or have members affected by the scheme's obligations.

Background

The *Foreign Influence Transparency Scheme Act (the Act)* received Royal Assent on 29 June 2018 and came into effect on 10 December 2018. Subsequent to concerns raised by the Law Council and others, the Act was significantly amended from its original iteration, including by expanding exemptions that apply to legal practitioners and including an exemption for industry representative bodies in specific circumstances.

Summary of scheme

This is a new regulatory scheme that requires persons and entities who undertake registrable activities on behalf of a foreign principal in Australia to register with the Commonwealth Attorney-General's Department, **unless they are exempt**.

The purpose of the scheme is to provide the public and government decision-makers with visibility of the nature, level and extent of foreign influence on Australia's government and political process.

Where an obligation does arise, registration must be completed within 14 days of either entering into a relationship with a foreign principal or undertaking a registrable activity. There is a three-month grace period for arrangements that were in place prior to 10 December 2018. This will cease on **10 March 2019**.

Memorandum

Persons and entities required to register must disclose information about the nature of their relationship with the foreign principal, and the activities they are undertaking on behalf of the foreign principal.

A foreign principal includes:

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

Categories of registrable activities include:

- parliamentary lobbying on behalf of a foreign government'
- parliamentary lobbying on behalf of other kinds of foreign principals for the purpose of political or governmental influence;
- general political lobbying for the purpose of political or governmental influence;
- communications activities for the purpose of political or government influence;
- disbursement activities for the purpose of political or governmental influence;
- employment or activities of former Cabinet ministers; or
- employment or activities of recent designated position holders in the 15 year period immediately following their public role.

The scheme also:

- establishes exemptions, including (but not limited to) for industry representative bodies in specific circumstances, activities related to the provision of legal advice or representation, diplomatic and consular activities, religious activities, activities of registered charities, activities related to the arts, and activities for the purpose of providing humanitarian aid;
- establishes transparency notices, which may be issued if the Secretary is satisfied that a person is a foreign government related entity, or a foreign government related individual. If a transparency notice is issued, the person or entity named is considered to be a foreign principal under the scheme and persons undertaking registrable activities on their behalf must register; and
- contains criminal offences ranging from failing to comply with obligations under the scheme, through to failing to register in circumstances where a person is required to do so.

It is the responsibility of the person undertaking the activities to determine whether they are required to register. It is an offence not to register if you are required to do so, and penalties apply.

Are Constituent Bodies captured by scheme?

The scheme includes an exemption for industry representative bodies in specific circumstances under section 29A of the Act which provides:

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

- (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.

This exemption covers circumstances where a registrable activity is undertaken in the course of representing the collective interests of members (both foreign and domestic) of an industry body.

The exemption applies when:

- the industry body is an Australian entity that represents the interest of business or a particular sector of business or industry;
- the body has members who are also Australian entities, and
- the registrable activity being undertaken is, or primarily relates to, representing the interests of business, or the particular sector, as a whole, and not the interests of a single member.

The exemption does not apply to representative groups which are foreign entities or where an entire membership is comprised of entities that are foreign principals.

Are lawyers captured by the scheme?

An exemption applies under section 25 of the Act in relation to legal advice and representation. Section 25 of the Act provides:

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.*

This exemption does not cover all the activities that could be undertaken by a legal practitioner on behalf of a foreign principal. For example, it does not apply where a foreign principal engages a legal practitioner to undertake activities which do not fall into the above categories, such as parliamentary lobbying.

Obligations

Registrants need to provide a range of information to support their registration. Some of this information will be made public via the scheme's website (see below). It is an offence to provide false or misleading information.

The information required for registration includes:

- the registrant's:
 - name;
 - contact details; and
 - occupation;

- details about the foreign principal and the relationship between the registrant and the foreign principal; and
- details about the registrable activity.

Registrants must keep their registration information up to date. Changes to personal details, details associated with the activities being undertaken and details of the foreign principal listed in the registration must be updated within 14 days of any material change. Changes can be made by logging into the user account that was created upon registration. Failure to keep registration up to date is an offence, and penalties apply.

When to register

Obligations to register came into effect from the scheme's commencement date of 10 December 2018.

From this date, you must register within 14 days of either entering into a relationship with a foreign principal or undertaking a registrable activity on behalf of a foreign principal. Failure to register when you are required to do so is an offence.

Registrations need to be renewed every 12 months if the registrant continues to undertake registrable activities for a foreign principal. If a registration is not renewed after 12 months, it will automatically expire.

Registrants may also end their registration earlier by notifying the Attorney-General's Department of the date the registrable activity or the registrable arrangement with a foreign principal ceased.

The public register

The public register will show information about the activities of registrants and the foreign interests they represent, seeking to provide the Australian Government and the Australian community with an accurate picture of foreign influence in Australia. The public register will be accessible from the scheme's website.

The following information will be published on the public register, via the scheme's website:

- the registrant's full name, and other names they are known by;
- the date that the registrant entered into the relationship with the foreign principal or began undertaking each registrable activity;
- a description of the registrant's relationship with the foreign principal;
- the full name of the foreign principal;
- the foreign principal's country of origin or association; and
- (where relevant) the date registration ended or the date registration expired.

Information that is commercially sensitive, relates to national security or is not true will not be published.

Penalties for non-compliance

The Act contains offences for non-compliance under the scheme. These include:

- undertaking registrable activities while not being registered under the scheme (6 months to five years imprisonment);

Memorandum

- failure to fulfil responsibilities (e.g. reporting and disclosure obligations) under the scheme (maximum penalties for these offences range from 60 penalty units to six months imprisonment);
- providing false or misleading information or documents in relation to an individual's registration (maximum penalty of three years imprisonment); and
- destroying records in connection with the scheme (maximum penalty of two years imprisonment).

Registration

Registration occurs through the [Registration portal](#).

Further information

Information about the operation of the scheme is available at <https://www.ag.gov.au/transparency>

Specific questions can be sent via the **Enquiry form** on the website.

Guidance materials and fact sheets to assist potential registrants to understand their obligations under the scheme are available at: <https://www.ag.gov.au/Integrity/foreign-influence-transparency-scheme/Pages/Resources.aspx>

Attached are two of the relevant fact sheets – Factsheet 1 (what is the foreign influence transparency scheme?) and Factsheet 8 (exemptions from registration).

Individuals and entities who are unsure if and when they may be required to register under the scheme are encouraged to obtain legal advice.

The Law Council will continue to work with the Attorney-General's Department regarding the possibility of the Law Council and the Department jointly providing information sessions, should it be of assistance to Constituent Bodies in understanding the scheme.

Contact

In the first instance, please contact Dr Natasha Molt, Director of Policy at natasha.molt@lawcouncil.asn.au or on 02 6246 3754 if you would like any further information.



Arthur Moses SC
President