

2016 - 2017- 2018

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

FOREIGN INFLUENCE TRANSPARENCY SCHEME BILL 2017

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the

Attorney-General, Senator the Honourable Christian Porter MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED AND
SUPERSEDES THE REPLACEMENT EXPLANATORY MEMORANDUM TABLED IN
THE HOUSE OF REPRESENTATIVES

FOREIGN INFLUENCE TRANSPARENCY SCHEME BILL 2017

GENERAL OUTLINE

1. The Act will establish the Foreign Influence Transparency Scheme ('the scheme'). The scheme introduces registration obligations for persons or entities who have arrangements with, or undertake certain activities on behalf of, foreign principals. It is intended to provide transparency for the Australian Government and the Australian public about the forms and sources of foreign influence in Australia.
2. While foreign actors are free to promote their interests in Australia's free and open society, this must be done in a lawful, open and transparent way.
3. Decision-makers in the Australian Government and the public should know what interests are being advanced in respect of a particular decision or process. However, it is difficult to assess the interests of foreign actors when they use intermediaries to advance their interests through activities such as lobbying or communication of information or material. When the relationship between the foreign actor and the intermediary is concealed, the ability to assess the interests being brought to bear on a particular decision or process is limited and ultimately undermines the ability of the decision-maker and the public to evaluate and reach informed decisions on the basis of those representations.
4. This Act intends to illuminate the nature and extent of activities undertaken by persons acting on behalf of foreign principals in Australian political and governmental processes. The scheme established by the Act is intended to provide transparency and oversight of the many and varied ways in which foreign actors seek to exercise influence over Australian political and governmental systems and processes, including the views of the Australian public on such matters.
5. The scheme does not prohibit the involvement of foreign actors in Australia's political and governmental processes. Rather, it simply imposes a requirement that, when a person is undertaking activities on behalf of a foreign actor, this is made transparent to the decision-maker and the Australian public, so that they are able to accurately assess the interests being brought to bear.
6. The scheme will:
 - require registration by persons undertaking certain activities on behalf of a foreign principal
 - contain appropriate exemptions for certain activities or classes of persons
 - allow the Secretary to issue a transparency notice stating that a particular entity or individual is related to a foreign government or foreign political organisation
 - require registrants to disclose information about the nature of their relationship with the foreign principal and activities undertaken pursuant to that

relationship (both at the initial point of registration and on an ongoing basis for the duration of the relationship)

- place additional disclosure requirements on registrants during elections and other voting periods
- allow some information to be made publicly available, to serve the transparency purposes of the scheme
- be supported by powers which will be vested in the Secretary, including issuing notices to produce information or documents, and
- be supported by tiered criminal offences for non-compliance.

7. The scheme is not intended to restrict, deter, criminalise or punish otherwise lawful activities or associations.

FINANCIAL IMPACT

8. The establishment of the scheme will have a financial impact. The Government has committed to providing \$3.2 million over four years for the scheme to be administered.

ACRONYMS

Acts Interpretation Act	<i>Acts Interpretation Act 1901</i>
AAT	Administrative Appeals Tribunal
Administrative Appeals Tribunal Act	<i>Administrative Appeals Tribunal Act 1975</i>
ACNC	Australian Charities and Not-for-profits Commission
AFP	Australian Federal Police
ASIO	Australian Security Intelligence Organisation
ASIO Act	<i>Australian Security Intelligence Organisation Act 1979</i>
Commonwealth Electoral Act	<i>Commonwealth Electoral Act 1918</i>
Crimes Act	<i>Crimes Act 1914</i>
Criminal Code	<i>Criminal Code Act 1995</i>
Consular Privileges and Immunities Act	<i>Consular Privileges and Immunities Act 1972</i>
Defence Act	<i>Defence Act 1903</i>
Defence Force Discipline Act	<i>Defence Force Discipline Act 1982</i>
Diplomatic Privileges and Immunities Act	<i>Diplomatic Privileges and Immunities Act 1967</i>
Fair Work (Registered Organisations) Act	<i>Fair Work (Registered Organisations) Act 2009</i>
FARA	<i>Foreign Agents Registrations Act 1938</i> (U.S.C. § 611 et seq – United States Code)
Guide to Framing Commonwealth Offences	<i>Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers</i>
ICCPR	<u><i>International Covenant on Civil and Political Rights</i></u>
Legislation Act	<i>Legislation Act 2003</i>
MOPS Act	<i>Members of Parliament (Staff) Act 1984</i>
Overseas Missions Act	<i>Overseas Missions (Privileges and Immunities) Act 1995</i>
Parliamentary Privileges Act	<i>Parliamentary Privileges Act 1987</i>

PJCIS	Parliamentary Joint Committee on Intelligence and Security
PJCIS Report	<i>Advisory Report on the Foreign Influence Transparency Scheme Bill 2017</i> , Parliamentary Joint Committee on Intelligence and Security, June 2018
Privacy Act	<i>Privacy Act 1988</i>
Public Governance Act	<i>Public Governance, Performance and Accountability Act 2013</i>
Public Service Act	<i>Public Service Act 1999</i>
Referendum Act	<i>Referendum (Machinery Provisions) Act 1984</i>
Telecommunications Act	<i>Telecommunications Act 1987</i>

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Foreign Influence Transparency Scheme Bill 2017

9. This Bill is 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 Bill

10. The Foreign Influence Transparency Scheme Bill 2017 (the Bill) will establish a regulatory scheme that identifies the forms and sources of foreign influence exerted in Australia. The scheme will enhance government and public knowledge of the level and extent to which foreign sources may have impact over the conduct of Australia's elections, government and parliamentary decision-making, and the creation and implementation of laws and policies.

11. In summary, the scheme will:

- require persons undertaking certain activities on behalf of a foreign principal to register
- contain appropriate exemptions for certain activities or classes of persons, such as diplomatic and consular activities and activities for the purposes of providing humanitarian aid
- allow the Secretary to issue a transparency notice stating that a particular entity or individual is related to a foreign government or foreign political organisation
- require registrants to disclose information about the nature of their relationship with the foreign principal and activities undertaken pursuant to that relationship (both at the initial point of registration and on an ongoing basis for the duration of the relationship)
- place additional disclosure requirements on registrants during elections and referendums
- allow some information to be made publicly available, to serve the transparency purposes of the scheme
- be supported by information gathering powers to support compliance, and
- be supported by tiered criminal offences for non-compliance.

12. The scheme will cover activities which are inherently political in nature, such as lobbying of members of parliament, as well as activities undertaken with the specific purpose of political or governmental influence.

Human rights implications

13. This Bill engages the following rights:

- the right to equality and non-discrimination is Articles 2(1) and 26 of the ICCPR
- the right to liberty of person and freedom from arbitrary detention in Article 9(1) of the ICCPR
- the right to equality before the courts and tribunals in Article 14 of the ICCPR
- the right to be presumed innocent in Article 14(2) of the ICCPR
- the right to privacy in Article 17 of the ICCPR
- the right to opinion and freedom of expression in Article 19 of the ICCPR
- the right to freedom of association in Article 22 of the ICCPR, and
- the right to take part in public affairs and the right to vote in Article 25 of the ICCPR.

Human rights promoted by the Bill

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

14. Article 19 of the ICCPR states that everyone has the right to hold opinions without interference and that everyone shall have the right to freedom of expression. Article 22 provides for the right to freedom of association with others. Article 25 of the ICCPR further states that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and to be elected at genuine periodic elections.

15. The Bill protects and promotes the rights to opinion and freedom of expression, freedom of association and participation in public affairs and elections by encouraging and promoting a political system that is transparent, and where the forms and sources of foreign influence on Australian democratic or political rights are clearly visible.

16. Every country is free to promote their interests in Australia's free and open society, provided these actions are lawful and transparent. Hidden or concealed foreign influence brought to bear on political or governmental processes can advance the interests of a foreign principal to the detriment of Australia's national interests. This is particularly the case where foreign principals use intermediaries to undertake activities on their behalf in Australia, concealing their involvement in the activities undertaken on their behalf. In circumstances where the ultimate source of the views and interests being put forward is not known, political decision-makers and the public are limited in their ability to evaluate and make informed decisions on the basis of those representations. Ultimately this has the potential to undermine the integrity and independence of Australia's political and government institutions.

17. This Bill will establish a transparency scheme that seeks to bring such influence to light. The scheme will illuminate, rather than prohibit, foreign influence activities in Australia's political and governmental processes when conducted transparently on behalf of a foreign principal. Provided the interests of the foreign principal are clear on the face of the activities undertaken on their behalf, such activities will continue to be 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 and the right to vote in Article 25 of the ICCPR.

18. The scheme will not prohibit persons acting on behalf of foreign principals in undertaking certain activities – rather, it requires that the involvement of the foreign principal be transparent. Provided a person registers under the scheme, they will still be able to undertake activities on behalf of foreign principals for the purpose of political or governmental influence, engaging the right to freedom of association with others in Article 12 of the ICCPR. This will have a positive impact on the integrity of Australia's political and electoral processes, as decision-makers and voters will be aware of the types of influence being brought to bear in such processes.

19. On this basis, the Bill will enable the exercise of democratic and political rights and duties without interference and thereby protect and promote the rights contained in Articles 19, 22 and 25 of the ICCPR.

Human rights limited by the Bill

Legitimate objective of the Bill

20. Under international human rights law, any limitation on rights and freedoms must be reasonable, necessary and proportionate for the pursuit of a legitimate objective. For an objective to be legitimate, it must address a pressing or substantial concern, and not simply seek an outcome regarded as desirable or convenient.

21. The objective of the Bill is to introduce a transparency scheme to enhance government and public knowledge of the level and extent to which foreign sources may, through intermediaries acting on their behalf, influence the conduct of Australia's elections, government and parliamentary decision-making, and the creation and implementation of laws and policies.

22. Foreign influence can have serious implications for political sovereignty and national policy as it may result in the prioritisation of foreign interests over domestic interests. For example, where a foreign principal engages an intermediary to represent their interests within Australia, the relationship between the intermediary and the foreign principal, and thereby the foreign interest, can remain hidden. This undermines the ability of decision-makers in government, as well as the public, to fully understand and evaluate the actions of that intermediary, and to make informed decisions.

23. During elections, referendums and plebiscites in particular, foreign influence can undermine the legitimacy or perceived legitimacy of government and its processes, enable the perception of corruption, and obfuscate information that might impact the voting decisions of the public. Consequently, it is important that activities that could impact Australia's government and political systems and processes, which are undertaken on behalf of foreign

principals, are distinguished from activities undertaken by domestic principals to influence such processes.

24. There is currently no formal mechanism requiring instances of foreign influence to be made known to government and the public. While some forms of foreign influence are captured through lobbying registers, these registers primarily target very narrow conduct, being lobbying of government representatives and politicians. Furthermore, these registers are not supported by binding legislative or regulatory frameworks and enforcement mechanisms. Similarly, Ministerial codes of conduct that variously regulate the post-employment activities of Ministers, are not supported by binding legislative or regulatory frameworks. This can impede the ability of these schemes to illuminate activities undertaken by former Ministers on behalf of foreign actors.

25. The scheme will achieve its transparency objective by publicly identifying the forms and sources of foreign influence exerted over political and governmental processes in Australia. It will do this by way of a publicly available register, containing information about the nature of a person's relationship with a foreign principal, and the activities undertaken pursuant to that relationship.

26. To ensure the scheme captures contemporaneous information on foreign influence activities, registrants will be required to update the register annually, in response to a change in material circumstances and during the voting period for a federal election, referendum or other designated vote.

27. The scheme will also require disclosure statements to be included on information or materials disseminated, distributed or otherwise communicated on behalf of a foreign principal. As a further layer of transparency, the scheme will require an annual report to be tabled in Parliament detailing information on the operation of the scheme.

Right to equality and non-discrimination

28. The right to equality and non-discrimination is set out at articles 2(1) and 26 of the ICCPR. Article 2(1) provides that each state undertakes to respect and ensure to all individuals the rights recognised in the ICCPR, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

29. In General Comment No. 18, the UN Human Rights Committee recognised that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the covenant.

30. It is important to note that the scheme does not prohibit the involvement of foreign principals, nor those individuals who represent their interests, in Australia's political and governmental processes. It does not target any particular country, nationality or diaspora community. Rather, the scheme seeks to provide transparency to all Australians about the

forms and sources of foreign influence in Australia's government and political processes by all foreign principals.

31. The scheme simply imposes a requirement, which applies equally to all registrants regardless of the foreign country involved, that when a person is undertaking activities on behalf of a foreign principal, this is made transparent to the decision-maker and the Australian public, so that they are able to accurately assess the interests being brought to bear in respect of a particular decision or process.

32. The Bill could be interpreted as limiting the right to equality and non-discrimination by requiring registration of those individuals or organisations that undertake certain activities on behalf of a foreign principal for the purpose of political or governmental influence and by establishing distinguishable obligations for former Cabinet Ministers, Ministers, members of Parliament and senior public officials. However, these limitations are reasonable and necessary to achieve the legitimate objective of the Bill.

Activities for the purpose of governmental or political influence

33. Only certain activities or arrangements to undertake activities on behalf of a foreign principal are registrable under the Scheme.

34. The activities which attract a requirement to register include parliamentary lobbying, general political lobbying, communications activity, and disbursement activity. Former Cabinet Ministers and recent members of Parliament, Ministers, persons employed as Senior Advisors under the *Members of Parliament (Staff) Act 1984*, Agency and deputy Agency Heads (and their equivalents) and Ambassadors and High Commissioners (collectively, designated position holders) may also be required to register under the scheme, if they are employed by, or act on behalf of, a foreign principal after leaving their public role – it is not necessary that these individuals undertake any of the activities listed above.

35. An activity is undertaken for the purpose of political or governmental influence if the sole or primary purpose, or a substantial purpose, of the activity is to influence any aspect of a process in relation to Australian democratic processes (see section 12).

36. The Bill has been intentionally drafted so that activities undertaken on behalf of a foreign government will always be registrable, unless an exemption applies. Foreign governments have the potential to exercise greater influence over Australian political and governmental processes, and have the ability to utilise proper diplomatic channels to exert such influence. There is therefore a strong public interest in knowing about activities undertaken on behalf of foreign governments, where they are undertaken outside diplomatic channels.

37. The Bill does not in any way discriminate on the basis of nationality or a particular political or other opinion. Nor does it seek to prohibit an individual or organisation from having or expressing particular political or other opinions or from having political associations. Instead, the Bill requires individuals and organisations to register where they are undertaking activities that may influence Australia's governmental and political processes on behalf of a foreign principal. This is essential to achieve the legitimate transparency objective of the scheme.

Activities undertaken by former Cabinet Ministers, Ministers, members of Parliament and senior public officials

38. Sections 22 and 23 of the FITS Bill create separate registration requirements for former Cabinet Ministers and recent designated position holders. These categories of individuals are also excluded from relying all of the exemptions in Division 4 of Part 2 of the Bill.

39. In creating these specific registration requirements for these categories of individuals, the Bill engages the right to non-discrimination and equality by distinguishing a certain section of the Australian public and establishing legislative provisions that apply only to that section. However, this is reasonable and necessary to support the legitimate transparency purpose of the scheme.

40. It is in the public interest to know when former Cabinet Ministers and recent designated position holders undertake activities on behalf of a foreign principal following the cessation of their role. Such persons have recently occupied significant positions of influence and may have had access to classified and sensitive information concerning Australian government priorities, strategies and interests. They are also likely to have a large number of influential and well-placed contacts at senior government levels, both in the Parliament and the Commonwealth public service, and have a greater ability to access those contacts to influence a political or governmental process on behalf of a foreign principal than other Australians. It is appropriate that those individuals are held to a high degree of accountability.

41. While the scheme creates separate obligations for these individuals, it does not prohibit them from entering into arrangements with, or engaging in activities on behalf of, a foreign principal. The scheme simply establishes registration requirements to ensure the Australian public and government decision-makers are aware of their connection to the foreign principal. This supports the legitimate transparency objective of the scheme and protects the rights to opinion and freedom of expression, freedom of association and participation in public affairs and elections by encouraging and promoting a political system that is transparent.

42. Accordingly, any limitations on the right to equality and non-discrimination are reasonable, necessary and proportionate to achieve the legitimate objective of the scheme.

Right to liberty of person and freedom from arbitrary detention

43. Article 9(1) of the ICCPR states that everyone has the right to liberty and security of person and that no one shall be subjected to arbitrary arrest or detention. Limitations on the right to liberty are permitted to the extent that they are ‘in accordance with such procedures as are established by law’, provided that the law and the enforcement of it is not arbitrary, and where they are reasonable, necessary and proportionate to achieve a legitimate objective.

44. The Bill limits the right to liberty of a person and the freedom from arbitrary arrest and detention by imposing penalties of imprisonment ranging from six months to five years for offences in Part 5 of the Bill. The purpose of introducing these offences is to provide a meaningful and serious deterrent for non-compliance with the scheme, and in turn, provide

the scheme with sufficient means to pursue a person who is deliberately undermining the transparency objectives of the scheme.

45. The penalties for the new offences are consistent with the established principles of Commonwealth criminal law policy as set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. The maximum penalties have been set in accordance with the principles set out in the Guide, including that:

- penalties have a single maximum penalty that is adequate to deter and punish a worst case offence, and
- penalties are set consistent with penalties for existing offences of a similar kind or of a similar level of seriousness.

46. The penalties for the offences contained in the Bill are appropriate and commensurate with the seriousness and culpability of offending. The highest penalties, of five years imprisonment, reflect conduct where a person is seeking to subvert the transparency objectives of the scheme. Less serious penalties are imposed for conduct that has an effect on the scheme's transparency purposes, but where a lesser fault element applies or the outcome of the conduct has a less serious effect.

47. In setting the penalty for the most serious offence at subsection 57(1) of the Act (intentional omission to apply or renew and registrable activity undertaken), consideration was given to the level of harm to Australia and Australia's political and governmental processes that may result from a person or entity failing to apply for, or maintain, registration under the scheme. As an example, significant adverse consequences meriting a substantial term of imprisonment could flow from a deliberate failure to register an arrangement with a foreign principal to undertake public relations and communications activities on their behalf. An arrangement stipulating that the activities are to commence when a federal election is called, and to target a vulnerable sector of the community in marginal electorates where it is likely that voters will change their vote if influenced by the activities, could have an appreciable impact on the outcome of a democratic process. A five year penalty is appropriate when the person knows they are required to register but does not do so and undertakes the activities. Failure to register deprives the public of the opportunity to know the foreign influence being brought to bear in respect of their vote in the federal election. The maximum penalties in section 57 seek to deter such serious conduct.

48. Responsibility for determining criminal guilt and imposing an appropriate sentence rests with the courts in their exercise of judicial power. The court will have discretion to implement an appropriate penalty based on all of the circumstances of the case. In this regard, the application of the penalties is not disproportionate. The offences in Part 5 of the Bill will be subject to a number of safeguards to ensure their appropriate application. The safeguards also promote the right to liberty and freedom from arbitrary detention, including the availability of defences, bail and parole entitlements, and fair trial rights such as to have matters heard by a competent, independent and impartial tribunal established by law.

Defences

49. Specific defences will be available for the offences of failure to comply with a notice requiring information or documents and providing false or misleading information or

documents. In addition to specific defences, the general defences under Part 2.3 of the Criminal Code will be available for all offences. These general defences include mistake or ignorance of fact, ignorance of subordinate legislation that was not available, claim of right over property, duress, sudden or extraordinary emergency, self-defence, and lawful authority.

50. Defences will allow persons at risk of deprivations of liberty to justify their actions and defend the criminal charge against them. If successful, a defence may reduce the offence charged to a lesser offence or provide a complete defence to the charge.

Right to equality before courts and tribunals

51. Article 14 of the ICCPR states that all persons shall be equal before the courts and tribunals. In General Comment No. 32 (CCPR/C/GC/32) the Human Rights Committee stated that the right to equality before the courts and tribunals is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. The Committee noted that access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice. It also noted that this right will also mean that the same procedural rights are to be provided to all parties unless distinctions based on law can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.

52. The amendments will engage the right to equality before courts and tribunals by limiting the application of the requirements of procedural fairness in relation to the issue, varying or revocation of transparency notices under proposed Division 3 of Part 1 of the Bill.

53. Section 14G provides that the Secretary is not required to observe any requirements of procedural fairness in exercising a power or performing a function regarding a transparency notice, other than those set out in section 14C. The effect of this subsection is to insert a clear legislative intention in the Act which will exclude the rules of procedural fairness that may otherwise be available to a person in these circumstances. As a consequence, the Act may be perceived as limiting the right to equality before the courts and tribunals by removing a person's right to have a reasonable opportunity to know the case against them and the reasons for a decision, thereby placing them at a disadvantage in terms of their procedural rights.

54. However, while the Bill may limit the right to equality before courts and tribunals, the limitation is reasonable and necessary to upholding the legitimate objective of the Bill and to provide certainty to potential registrants who may be unsure about whether they will be required to register under the scheme. There is no detriment to a person being named in a transparency notice, as no rights or obligations are created for that person to observe. Furthermore, it is important that the Secretary have the ability to issue a notice urgently if required.

55. The amendments do provide for some forms of procedural fairness in respect of the Secretary's decision to issue a provisional transparency notice. For example, proposed section 14C requires the Secretary to take reasonable steps to give a person named in a provisional transparency notice an invitation to provide submissions about the provisional transparency notice. If the person makes submissions, the Secretary is required to consider whether the provisional transparency notice is required to be revoked, and notify the person of the decision and the person's right to have the decision reviewed. The purpose of these

requirements is to allow the person to have sufficient information to make submissions to the Secretary about whether or not the person does meet the criteria of a foreign government related entity or a foreign government related individual.

56. Proposed section 14H also provides that a person who is the subject of the notice will also have the right to merits review under the *Administrative Appeals Tribunal Act 1975* in respect of a number of decisions relating to the issue, variation and revocation of provisional transparency notices and final transparency notices. The effect of this section is that person who is the subject of a notice will be able to appeal to the Administrative Appeals Tribunal for independent merits review of administrative decisions made by the Secretary under the Act. In so doing, section 14H promotes a person's right to equality before courts and tribunals by providing a clear mechanism by which a person can seek merits review of the Secretary's decision to issue, vary or revoke a provisional or final transparency notice (as the case may be).

57. To the extent that the transparency notice scheme limits the right to equality before courts and tribunals by limiting the application of procedural fairness in Division 3 of Part 1 of the Bill, it does so in a way that is reasonable, necessary and proportionate to the legitimate objective of the scheme, that is to make transparent to government and the public the sources of foreign influence in Australia.

Presumption of innocence

58. Article 14(2) of the ICCPR provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. In General Comment No. 32 (CCPR/C/GC/32) the UN Human Rights Committee stated that the presumption of innocence imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. The presumption of innocence may be limited provided the limitation 'is reasonable in the circumstances' and necessary and proportionate to achieve a legitimate objective.

59. The Bill limits the presumption of innocence by placing an evidentiary burden on the defendant with respect to defences.

60. The Bill creates a number of specific defences to offences in sections 59 (failure to comply with a notice requiring information) and 60 (providing false or misleading information or documents) which reverse the burden of proof by providing that a defendant bears the evidential burden. Consistent with section 13.3 of the Criminal Code, this burden requires the defendant to adduce or point to evidence that suggests a reasonable possibility that a particular matter exists or does not exist. Reversing the burden of proof limits Article 14(2) in that a defendant's failure to discharge the burden may permit their conviction despite reasonable doubt as to their guilt.

61. The Guide to Framing Commonwealth Offences acknowledges that reversing the evidence burden of proof is appropriate in certain circumstances. This includes where a matter is peculiarly within the knowledge of the defendant and where it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. The Guide also states that offence-specific defences can be more readily justified if:

- the matter in question is not central to the question of culpability for the offence
- the offence carries a relatively low penalty, or
- the conduct proscribed by the offences poses a grave danger to public health or safety

62. It is reasonable and necessary for the burden of proof to be placed on the defendant where the facts in relation to the defence are peculiarly within the knowledge of the defendant. For example, for a defence at subsection 60(2) a defendant should readily be able to point to evidence that the information given or document provided is not false or misleading in a material particular, as the defendant has the most relevant knowledge of the circumstances and activities to which his or her registration applies. Whether something is false or misleading in a material particular is peculiarly within the mind of the defendant because only the registrant will know the nature of their activities and how they align with the direction or wishes of the foreign principal. An example is as follows:

Person X is engaged by company Y, (which is a foreign government related entity for the purposes of the scheme), to undertake parliamentary lobbying and communications activities on its behalf. Person X completes and submits a registration under the scheme but omits information about some of the activities he or she will undertake on behalf of company Y. The Secretary gives Person X a notice under section 46 of the Act requesting further information and documents about Person X's relationship with company Y, including the nature of activities undertaken on behalf of company Y. Person X receives the notice and responds by providing information about the communications material he or she is distributing on behalf of company Y, but omits information about the parliamentary lobbying activities undertaken on behalf of company Y, which has the effect of making the information provided misleading. However, Person X knows that the information omitted relates to activity that is exempt under the scheme because of the exemption for a person operating under the name of a foreign government related entity which is a commercial or business pursuit under subsection 29(3).

63. In this example, it is Person X's unique and peculiar knowledge of its registrable arrangement with company Y that makes Person X best-placed to raise the defence at subsection 60(3). Person X will be able to point to evidence that shows the omission does not render the information misleading in a material particular, because the information omitted is exempt under subsection 29(3) of the Bill. This information is peculiarly within the mind of Person X and is consistent with the principles set out in the Guide relating to offence-specific defences. The Commonwealth may not have the unique knowledge and expertise to make this assessment.

64. Reversal of proof provisions are proportionate because even where the defendant discharges the evidential burden, the prosecution will still be required to disprove those matters beyond reasonable doubt, consistent with section 13.1 of the Criminal Code. This is in addition to proving other elements of the offence beyond reasonable doubt.

Right to privacy

65. Article 17 of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. The UN Human Rights Committee have interpreted the right to privacy as comprising freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The right to privacy may be limited where the limitation is lawful and not arbitrary and where it is reasonable, necessary and proportionate to achieve a legitimate objective.

66. The Bill limits the right to privacy by including a transparency notice scheme in proposed Division 3 of Part 1 of the Bill and by requiring disclosure of information pertaining to the activities and relationships of persons or entities undertaking activities on behalf of a foreign principal.

Transparency notices

67. Division 3 of Part 1 of the Bill allows for the Secretary to issue a provisional transparency notice stating that a particular person is a foreign government related entity or a foreign government related individual. There will be a period within which the Secretary can consider submissions from the person named in the notice before it comes into force as a final transparency notice. The effect of a transparency notice is to make it clear to a potential registrant that a particular person or entity is a foreign government related entity or a foreign government related individual and therefore a foreign principal for the purposes of the scheme. Amendments to proposed section 43 of the Bill will require a transparency notice to be made publicly available by the Secretary.

68. Proposed section 14J will provide a protection against actions for defamation which may arise as a result of the transparency notice regime. This means that no action for defamation will lie against the Commonwealth, a Minister, the Secretary, the Department or another Agency or an officer of a Department or another Agency because the Secretary or an officer takes actions in relation to a transparency notice. Proposed section 14J may therefore be interpreted as limiting the right to privacy by naming a person as being related to a foreign government. The person may perceive this as damaging to his or her reputation and limiting the means by which a person named in a transparency notice can protect themselves from such damage. The limitation imposed by section 14J is reasonable and necessary to achieve the Bill's legitimate objective, which is to introduce a transparency scheme to enhance government and public knowledge of the level and extent to which foreign sources may, through intermediaries acting on their behalf, influence the conduct of Australia's elections, government and parliamentary decision-making, and the creation and implementation of laws and policies.

69. The transparency notice scheme is critical to achieving this objective – it allows the Secretary to investigate and declare that a company or individual is related to a foreign government or foreign political organisation in cases where there is uncertainty, or where a person has sought to conceal the nature of their relationship with a foreign government. Such a notice may only be issued where the Secretary is satisfied that the person falls within the definition, and will only occur where the matter has been properly investigated.

70. The requirement that a provisional transparency notice be issued before a final transparency notice and the person named in the notice have time to make submissions before the provisional transparency notice becomes final, reduces any perceived limitation on the right to privacy. Proposed section 14C requires that, if the Secretary issues a provisional transparency notice in relation to a person, the Secretary must also take reasonable steps to invite that person to make submissions on the provisional transparency notice within 14 days of the Secretary making the invitation. The purpose of these requirements is to allow the person to make submissions to the Secretary about whether or not the person does meet the criteria of a foreign government related entity or a foreign government related individual. The Secretary will have the ability to vary or revoke a transparency notice under section 14E.

71. Proposed section 14H also provides that a person who is the subject of the notice will also have the right to merits review under the *Administrative Appeals Tribunal Act 1975* in respect of a number of decisions relating to the issue, variation and revocation of provisional transparency notices and final transparency notices. The effect of this section is that person who is affected by a notice will be able to appeal to the Administrative Appeals Tribunal for independent merits review of administrative decisions made by the Secretary under the Act. In so doing, section 14H provides another mechanism by which a person can address a perceived limitation on their right to privacy by being named in a transparency notice. Judicial review of the Secretary's decisions will also be available under the *Administrative Decisions Review Act 1997*.

72. To the extent that the transparency notice scheme limits the right to privacy, it does so in a way that is reasonable, necessary and proportionate to the legitimate objective of the scheme to make transparent to government and the public the sources of foreign influence in Australia.

Disclosure of information under the scheme

73. The Bill limits the right to privacy in that it requires disclosure of information pertaining to the activities and relationships of persons or entities undertaking activities on behalf of a foreign principal. The limitation is reasonable and necessary as the disclosure of certain information is required to achieve the transparency objective of the scheme.

74. In General Comment No. 16, the UN Human Rights Committee noted that the protection of privacy is necessarily relative, as all persons live in a society. However, authorities should only be able to call for information relating to an individual's private life, where the knowledge of that information is essential to the interests of society.

75. Allowing information to be publicly available fulfils the fundamental transparency objective of the scheme and provides the Australian public and decision-makers with access to specific information about the forms and sources of foreign influence being brought to bear in Australian political and governmental systems and processes. The collection and retention of information relevant to the scheme is carefully regulated and there are a number of provisions in the Bill that limit disclosure of information relevant to the scheme in specific circumstances.

76. To the extent that the scheme allows for the public disclosure of certain information, and this requirement limits a person's right to privacy, this limitation is reasonable, necessary and proportionate to achieve the transparency objective of the scheme.

Freedom of expression

77. Article 19(2) of the ICCPR states that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The right to freedom of expression includes the right not to impart information. Any limitation on the freedom of expression must be reasonable, necessary and proportionate for the pursuit of a legitimate objective and for the respect of the rights or reputations of others or for the protection of national security, public order, or public health or morals.

78. The Bill engages the right to freedom of expression as it will require persons to impart information under the scheme, and will regulate certain activities undertaken on behalf of a foreign principal, including the seeking, receiving and imparting of information and ideas generally.

79. Under Part 2 of the Bill, persons or entities engaging in certain activities will be required to publicly disclose, by way of registration, information about their relationship with a foreign principal and the activities undertaken pursuant to that relationship. Part 3 of the Bill will require these persons and entities to provide ongoing information to the scheme, some of which will be made publicly available. The Bill may therefore be interpreted as limiting the freedom of expression by attaching compulsory registration and reporting obligations that involve the seeking, receiving and imparting information.

80. The obligation to register and provide ongoing reports is intended to support the transparency objectives of the scheme. This information is intended to enable the Australian Government and public to understand and properly judge the activities of persons who act on behalf of foreign principals. In General Comment No. 34 (CCPR/C/GC/34), the UN Human Rights Committee emphasised the importance of the principles of transparency and accountability for the protection and promotion of human rights. By ensuring transparency of the sources and interests behind certain activities, the Bill will promote the rights of individuals to hold opinions as protected by Article 19(1).

81. The obligation to register and provide ongoing reports will promote a number of other human rights, including the ability to hold opinions and take part in public affairs. It does this by ensuring access to current and accurate information about activities being undertaken to influence political and governmental systems and processes. In this regard, any limitations on the freedom of expression to the extent that they promote these and other human rights are reasonable.

82. Division 3 of Part 2 of the Bill will allow the Secretary to give a person a notice which requires the recipient of the notice to provide information the person has about whether they are liable to register under the scheme, or which is relevant to the operation of the scheme. If a person does not comply with this notice they may be committing a criminal offence, which attracts a maximum penalty of 6 months imprisonment.

83. The ability to request, and effectively compel, the provision of information is an important tool in being able to monitor compliance with the scheme. This will ensure that people who are required to register do so, and that people who are registered are complying with the reporting requirements under the scheme.

84. Accordingly, while the Bill may limit the right to freedom of expression, the limitation is reasonable because it will help ensure compliance with the scheme, and ensure law enforcement authorities have the information needed to investigate non-compliance.

85. In General Comment No. 34 (CCPR/C/GC/35) the UN Human Rights Committee noted that the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion/a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other rights under the ICCPR.

86. The scheme will not impose a ban on the media in relation to the communication of information and ideas about political issues. However, registration may be required if the activities of the press or media are done on behalf of a foreign principal for the purpose of influencing a political or governmental processes.

87. To the extent that the registration and reporting requirements under the scheme limit the right to freedom of expression, they do so in a way that is reasonable, necessary and proportionate to the objective of the scheme, that is to make transparent to government and the public the sources of foreign influence in Australia.

Freedom of association

88. Article 22 of the ICCPR states that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

89. The Bill engages the freedom of association as it regulates certain activities undertaken on behalf of a foreign principal, including activities which may fall within the scope of Article 22. For instance, if a group of persons formed an association and held a protest with a view to influencing a section of the Australian public in relation to a political or governmental process, and do so on behalf of a foreign principal, the association may be required to register under the scheme.

90. Failing to register under the scheme where a person is liable to do so may result in criminal liability. Although the scheme will not prevent activities being undertaken on behalf of a foreign principal, the requirement to register and disclose those activities may be interpreted as limiting the freedom of association.

91. However, Article 22 allows for permissible limitations on the freedoms where it is to advance a legitimate objective, including the interests of national security and the protection of the rights and freedoms of others. Any limitation on the freedom of association must be reasonable, necessary, and proportionate to the pursuit of one of these legitimate objectives.

92. In certain circumstances, the scheme will protect Australia's national security interests. This will occur by raising awareness amongst decision-makers and the public of foreign influence in political and governmental processes relating to national security that may have otherwise gone undetected and which has the potential to distort decision-making

processes concerning our national security. In this regard, the limitation on the freedom of association is reasonable, necessary and proportionate.

93. In General Comment No. 34 on Article 19 (CCPR/C/GC/34), the UN Human Rights Committee emphasised the importance of the principles of transparency and accountability for the protection and promotion of human rights. The purpose of the scheme – to enhance transparency around the activities of persons who act on behalf of foreign principals in Australia – is intended to protect the sovereignty of Australian political and governmental processes and make decision-makers accountable for their actions by illuminating the extent of foreign influence which may have been sought to bear on a particular decision.

94. Accordingly, the limitation on freedom of association is reasonable, necessary and proportionate as it promotes protection of the rights and freedoms of others.

Right to take part in the conduct of public affairs and the right to be elected

95. Article 25 of the ICCPR states that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and to be elected, without unreasonable restrictions.

96. In General Comment No. 25 on Article 25 (CCPR/C/21/Rev.1/Add.7)) the UN Human Rights Committee noted that citizens may take part in the conduct of public affairs by exerting influence through public debate and dialogues with their representatives or through their capacity to organize themselves.

97. Australia is a free and open society, and the Bill does not prevent any person from contributing to public debate in Australia, or to vote in any election. Rather, the Bill is intended to provide transparency around contributions to and involvement in Australia's political and governmental processes, if undertaken on behalf of a foreign principal.

98. The Bill could be interpreted as limiting the right to take part in the conduct of public affairs. This is because it will require a person to register if they undertake certain activities on behalf of a foreign principal, including activities which could be described as 'influencing through public debate and dialogues.' In addition to registration requirements, if a person distributes communications materials on behalf of a foreign principal as part of the contribution to public debate, that person may be required to make a disclosure in the material about the foreign principal.

99. The requirements may be interpreted as being restrictions, but are nonetheless reasonable in all of the circumstances. The objective of the Bill is to enhance transparency for the Australian Government and public, to ensure that foreign principals are not exerting undue influence over political and governmental processes. This is a legitimate objective and requiring a person to register and report on such activities is not an unreasonable restriction in pursuit of this objective.

100. In General Comment No. 25 (CCPR/C/21/Rev. 1/Add. 7) the UN Human Rights Committee also stressed the importance of voter education to ensure the effective exercise of Article 25 rights by an informed community. The scheme will support voter education by informing the public of foreign influence over political and governmental processes, including in relation to federal elections, referendums and other votes. This will enable the

community to make informed judgments and decisions about all of the influences that are brought to bear over a particular vote.

101. Accordingly, any limitations on the right to take part in the conduct of public affairs and to vote are reasonable, necessary and proportionate to achieve the transparency objective of the scheme.

Conclusion

102. The Bill is compatible with human rights because it promotes the protection of a number of human 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 it may limit human rights, those limitations are reasonable, necessary and proportionate to the legitimate objective of the Bill, that is to enhance government and public knowledge of the level and extent to which foreign sources may influence political or governmental systems and processes in Australia.

NOTES ON CLAUSES

Part 1—Preliminary

Division 1—Preliminary

Section 1 – Short title

103. Section 1 provides that when the Bill is enacted, it is to be cited as the *Foreign Influence Transparency Scheme Act 2017*.

Section 2 – Commencement

104. Section 2 provides for the commencement this Bill, as set out in the table.

105. The table provides that the whole of the Bill will commence on a single day to be fixed by Proclamation. However, if the provisions in the Act do not commence within the period of 12 months beginning on the day the Act receives Royal Assent, the provisions will commence on the day after the end of that period.

106. The purpose of allowing commencement to occur on a day to be fixed by Proclamation is to allow sufficient time to establish administrative and other arrangements that will support the operation of the scheme. This will include making appropriate rules and regulations on a range of matters, including the manner and content of forms which must be provided by registrants under the scheme, annual reporting requirements and circumstances in which scheme information can be used and shared.

107. The Proclamation period is limited to a period of 12 months, beginning on the day the Bill receives Royal Assent. The 12 month period is a finite period and is intended to ensure that commencement is not delayed beyond what is reasonably necessary to establish arrangements to support the operation of the scheme.

Section 3 – Object

108. Section 3 provides that the object of the 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.

Section 4 – Simplified outline of this Act

109. Section 4 sets out a simplified outline of the Act. The section provides that:

- persons who undertake activities on behalf of a foreign principal may be liable to register under the scheme in certain circumstances
- certain information about registrants and their activities will be made publicly available
- registrants have various responsibilities under the scheme, and

- various penalties apply for non-compliance with the scheme.

110. Simplified outlines appear throughout the Act, and are included to assist readers to understand the substantive provisions. The outlines are not intended to be comprehensive. It is intended that readers should rely upon the substantive provisions.

Section 5 – Extension to external Territories

111. Section 5 provides that the Act extends to every external Territory.

Section 7 – Constitutional basis and severability

112. Section 7 sets out the Constitutional basis and severability of provisions contained in the Act. The effect of this section is that if a court finds that the Commonwealth's legislative power does not support the Act, a particular provision or multiple provisions, the Act shall nevertheless be valid to the extent to which it is supported by other legislative powers.

113. Subsection 7(1) provides that that the Act relies on:

- the Commonwealth's legislative powers under paragraph 51(xxix) (external affairs)
- the Commonwealth's legislative powers under paragraph 51(xxxix) (matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth), and
- any implied legislative powers of the Commonwealth.

114. Subsections 7(2) and (3) are provisions relating to the additional and severable operation of the Act. Subsections 7(4) – 7(11) set out additional and severable heads of legislative power under the Constitution which support the Act. These subsections provide that the 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 (subsection 7(4))
- activities undertaken using a communications service to which paragraph 51(v) of the Constitution applies (subsection 7(5))
- activities undertaken by:
 - corporations to which paragraph 51(xx) of the Constitution applies (paragraph 7(6)(a)), or
 - persons undertaking activities on behalf of corporations to which paragraph 51(xx) of the Constitution applies (paragraph 7(6)(b))

- obtaining information for purposes relating to census and statistics within the meaning of paragraph 51(xi) of the Constitution (subsection 7(7))
- activities undertaken on behalf of persons who are aliens within the meaning of paragraph 51(xix) of the Constitution (subsection 7(8))
- activities undertaken beyond the limits of the States and Territories (subsection 7(9))
- give effect to Australia's rights and obligations under an agreement with one or more foreign countries (subsection 7(10)), and
- activities undertaken in a Territory (subsection 7(11)).

Section 8 – Application to Commonwealth, State and Territories

115. Section 8 provides that nothing in the Act will require the Crown in the right of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory, or a department or instrumentality of these entities, to register under the scheme.

116. This is intended to make clear that if the practical effect of the Act is that the Commonwealth, a State or a Territory would be required to register under the scheme, registration will not be required.

Section 9 – Concurrent operation of State and Territory laws

117. Section 9 provides that the 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 the Act.

118. An area of possible overlap of the scheme is with lobbying laws and ministerial codes of conduct across State and Territory jurisdictions. This section seeks to ensure that where a law of a State or Territory imposes obligations on persons, those obligations are not affected by the existence of this Act (to the extent those obligations are capable of operating concurrently with the obligations created by the Act).

Section 9A – Relationship of this Act to certain privileges and immunities

119. Section 9A clarifies that the scheme does not abrogate parliamentary privilege or legal professional privilege.

120. Subsection 9A(1) provides that the Act does not affect the law relating to the powers, privileges and immunities of any of the following:

- each House of the Parliament
- the members of each House of the Parliament, and
- the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

121. This section relates to the special legal rights and immunities that apply to each House of the Parliament, its members and its committees. These rights and immunities derive from section 49 of the Australian Constitution and are codified in the *Parliamentary Privileges Act 1987*. The function of parliamentary privilege is to allow for the proper operation of the Parliament and to protect the ability of legislative Houses, their members and committees to exercise their authority and perform their duties.

122. Subsection 9A(2) provides that the Act does not affect the law relating to legal professional privilege.

123. Legal professional privilege protects confidential communications between a lawyer and a client from disclosure where those communications are for the dominant purpose of seeking or providing legal advice, or for use in existing or anticipated legal proceedings. Legal professional privilege facilitates the administration of justice by promoting open communications between a lawyer and their client, enabling the lawyer to give proper advice and representation.

124. Subsection 9A(3) limits the application of the Secretary's information-gathering powers under proposed sections 45 and 46 of the Act with respect to information or documents that are protected by parliamentary privilege or legal professional privilege.

125. Section 45 enables the Secretary to issue a notice seeking information from a person if the Secretary reasonably suspects that the person might be liable to register under the scheme in relation to a foreign principal and the person is not registered under the scheme in relation to the foreign principal. Section 46 enables the Secretary to issue a notice seeking information from a person if the Secretary reasonably believes that the person has information that is relevant to the operation of the scheme.

126. Paragraph 9A(3)(a) provides that 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:

- the information or documents are protected by a privilege or immunity mentioned in subsections 9A(1) (parliamentary privilege) or (2) (legal professional privilege) – subparagraph 9A(3)(a)(i), or
- complying with the requirement would involve a breach of a privilege or immunity mentioned in subsections 9A(1) (parliamentary privilege) or (2) (legal professional privilege) – subparagraph 9A(3)(a)(ii).

127. Paragraph 9A(3)(b) provides that where paragraph 9A(3)(a) applies, a person is not required to comply with any notice or request issued by the Secretary under sections 45 or 46 to that effect. This paragraph clarifies that the person is not required to comply with the notice issued by the Secretary only to the extent that it may require the provision of privileged information or involve a breach of privilege. The person must comply with the notice to the extent that it does not have this effect.

128. The fact that an express statement has been included about the privileges of the Commonwealth Parliament should not be read as an intention to override any state or territory privileges or immunities, even though section 9A does not mention them.

Amendment 56 inserts a specific exemption for state and territory members of Parliament. There is no intention to abrogate any other privileges, rights or immunities, wherever they may arise.

Division 2—Definitions

Section 10 – Definitions

129. Section 10 sets out definitions for terms used in the Act.

130. ***Applicable disallowance period*** will have the meaning given to it in subsection 53(5). Subsection 53(5) defines ***applicable disallowance period*** for a House of the Parliament to mean the period of 15 sitting days of that House after the rules, or a copy of the rules, was laid before that House in accordance with section 38 of the *Legislation Act 2003*.

131. ***Approved form*** will have the meaning given to it by paragraph 66(a). Paragraph 66(a) provides that an approved form is a form that has been approved in writing by the Secretary for the purposes of a provision of the Act. The Act requires an approved form to be used where a person is complying with an obligation under the scheme, including applications for registration (see section 16), notifying the Secretary of the end of registration (see section 31) and reporting to the Secretary on various matters (see sections 34, 35, 36, 37 and 39).

132. ***Approved manner*** will have the meaning given to it by paragraph 66(b). Paragraph 66(b) provides that a manner for lodging a form under the Act is an approved manner if the manner has been approved in writing by the Secretary for the purposes of the Act. The Act requires various applications and notices to be given in an ‘approved manner,’ including applications for registration (see section 16), notifying the Secretary of end of registration (see section 31), and reporting to the Secretary on various matters (see sections 34, 35, 36, 37 and 39).

133. ***Arrangement*** is defined to include a contract, agreement, understanding or other arrangement of any kind, whether written or unwritten. It is intended that a formal contractual arrangement or a written agreement are sufficient, but not necessary, to establish that an arrangement is in place. The arrangement need not be established within Australia.

134. ***Australian police force*** means the Australian Federal Police, or a police force or police service of a State or Territory. This definition is intended to cover all police forces and services across all Australian jurisdictions.

135. ***Becomes*** liable to register will have the meaning given to it by subsection 18(1). Subsection 18(1) provides that a person becomes liable to register under the scheme if they undertake a registrable activity on behalf of a foreign principal, or they enter into a registrable arrangement with a foreign principal (even if they do not yet engage in any registrable activities).

136. ***Benefit*** is defined to include any advantage, and is not limited to property. This is a non-exhaustive definition, and is intended to cover financial and non-financial benefits. It is intended to include such things as preferential treatment and quid pro quo arrangements. The definition of benefit could cover, for example, a person agreeing to publicly support a particular policy if the other person were to arrange a meeting with a third party.

137. **By-election** is defined to mean the same as in Part XVB of the *Commonwealth Electoral Act 1918*. Section 202AA of the Commonwealth Electoral Act provides that a by-election means an election of a member of the House of Representatives that is not part of a general election.

138. **Candidate** is defined to have the meaning as in the Commonwealth Electoral Act.

139. The definition of **candidate** also states that a person who is, at a time, taken to be a candidate in an election within the meaning of the Commonwealth Electoral Act, is taken to be a candidate at that point in time for the purposes of this Act. The Commonwealth Electoral Act may extend the time for which a person is regarded to be a candidate beyond polling day in some circumstances. The second part of the definition of 'candidate' in this Act is intended to align with that extended time.

140. **Ceases** to be liable to register will have the meaning given to it by section 19. Section 19 provides that a person ceases to be liable to register in relation to a particular foreign principal if they give a notice to the Secretary under section 31 (notice of end of liability to register), and on the day specified in the notice, there is no registrable arrangement in existence with the foreign principal.

141. **Commonwealth public official** will have the same meaning as in the *Criminal Code Act 1995*. The Dictionary to the Criminal Code defines a Commonwealth public official to mean:

- 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*
- 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*, or
 - 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*
 - the *Australian Capital Territory (Self-Government) Act 1988*
 - the *Corporations Act 2001*
 - the *Norfolk Island Act 1979*
 - the *Northern Territory (Self-Government) Act 1978*, or
 - a provision specified in the regulations
- 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.

142. ***Communications activity*** will have the meaning given to it by section 13.

Subsection 13(1) provides that a person undertakes communications activity if the person communicates or distributes information or material to the public or a section of the public. Subsection 13(2) clarifies that a reference to information or materials includes information or

materials in any form, including oral, visual, graphic, written, electronic, digital and pictorial forms. The term has been defined broadly and is intended to capture the various ways in which information or materials can be communicated, including as technologies and practices change over time. This definition would include communicating information or material via newspapers, magazines, editorials, social media, fixed landlines, mobile telephones, books, and publications. The abovementioned examples are not intended to limit the operation or scope of this definition.

143. ***Deal*** is defined consistently with the definition of the term in Part 5.6 of the Criminal Code (see sections 90.1 and section 121.1). A person will ***deal*** with information or an article if the person does any of the following in relation to the information or article:

- receives or obtains it
- collects it
- possesses it
- makes a record of it
- copies it
- alters it
- conceals it
- communicates it
- publishes it, or
- makes it available.

144. ***Designated position holder*** will be defined to mean any of the following:

- a Minister
- a member of the Parliament
- 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
- an Agency Head (within the meaning of the *Public Service Act 1999*)
- a deputy agency head (however described)
- the holder of an office established by or under a law of the Commonwealth and equivalent to that of an 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 of Australia.

145. This definition is relevant for the purposes of section 23 of the Act, which requires **recent designated position holders** to register under the scheme if, in undertaking a registrable activity on behalf of a foreign principal, the person contributes experience, knowledge, skills or contacts gained in the person's former capacity.

146. **Designated vote** is defined to mean a referendum, or a vote, survey or other process for the expression of opinions, which has been prescribed by the rules for the purposes of this paragraph. **Referendum** is defined in section 10 to have the same meaning as in the *Referendum (Machinery of Provisions) Act 1984*.

147. The reference to a vote in the definition of **designated vote** is intended to include a federal election or by-election. The reference to a survey or other process for the expression of opinion is intended to capture activities such as the Australian Marriage Law Postal Survey which was conducted in 2017. The ability to prescribe votes, surveys or other processes by rules provides sufficient flexibility for additional processes to be prescribed to accommodate any future means of obtaining views from the public.

148. The definition of **disbursement activity** provides that a person undertakes **disbursement activity** if the person disburses money or things of value, and neither the person disbursing, 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. The term 'things of value' is not defined and is to be given its ordinary meaning, to include things other than money.

149. **Electoral donations threshold** is defined to mean \$13,500. This is consistent with the disclosure threshold used in Part XXX of the Commonwealth Electoral Act.

150. **Federal election** is defined to mean a House of Representatives election or a Senate election within the meaning of the Commonwealth Electoral Act.

- Section 4 of the Commonwealth Electoral Act defines **House of Representatives election** to mean an election of a member of the House of Representatives. This definition covers by-elections.
- Section 4 of the Commonwealth Electoral Act defines **Senate election** to mean an election of Senators for a State or Territory. Whether a Senate election occurs on the same day as a general election of members of the House of Representatives is immaterial to the definition of Senate election.

151. **Final transparency notice** is defined to have the meaning given to it in section 14C of the Act. Section 14C provides that if the Secretary does not revoke a provisional transparency notice before the end of the 28 day period within which the person may make submissions, the notice comes into force as a **final transparency notice**. Consistent with paragraph 14D(b), the notice then remains in force until revoked.

152. **Foreign country** is defined to mean any country other than Australia or an external Territory, whether or not the foreign country is an independent sovereign State.

153. **Foreign government** is defined to mean:

- the government of a foreign country or of part of a foreign country
- an authority of the government of a foreign country
- an authority of the government of part of a foreign country, or
- a foreign local government body or foreign regional government body.

154. This definition is intended to cover all levels of government within a foreign country. The reference to an ‘authority’ of the government is intended to cover departments, agencies or other entities that act in the name of a foreign government. For example, the Home Office of the United Kingdom would be an authority of the government of a foreign country.

155. A **foreign government related entity** is defined to mean a person, other than an individual, who is related to a foreign government or foreign political organisation in one or more of the following ways:

- if the person is a company, one of more of the following applies:
 - the foreign principal holds more than 15% of the issued share capital of the company
 - the foreign principal holds more than 15% of the voting power in the company
 - the foreign principal is in a position to appoint at least 20% of the company’s board of directors
 - 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
 - the foreign principal is in a position to exercise, in any other way, total or substantial control over the company
- if the person is not a company, either of the following applies:
 - 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, or
 - the foreign principal is in a position to exercise, in any other way, total or substantial control over the person
- if the person is not a company, or falls within paragraphs (d) to (h), of the definition of **person** in section 10 and the foreign principal is a foreign political organisation:

- a director or 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
- 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.

156. Persons who are individuals will not be covered by this definition (these persons are covered by the definition of ***foreign government related individual***. Under this definition, a person need not be resident in Australia, be formed or created in Australia, be carrying on a business within Australia, or be constituted under a law of Australia.

157. No part of the definition of ***foreign government related entity*** will be satisfied by the provision of funding by a foreign government or foreign political organisation alone. If that is the only link between an entity and a foreign government or foreign political organisation then the definition will not be satisfied.

158. Paragraph (a) of the definition applies where the person is a company. It only applies where the foreign principal is a ***foreign government*** or a ***foreign political organisation*** (as defined in section 10). The definition will not apply where the foreign principal is another ***foreign government related entity***.

159. Subparagraph (a)(i) of the definition applies where the foreign principal holds more than 15% of the issued share capital of the company. This issued share capital is intended to be a reference to the total of a company's shares that are held by shareholders. This paragraph cannot be interpreted to apply to other means by which a company receives funding. For example, subparagraph (a)(i) will not apply if a company receives more than 15% of its overall funding from a foreign government or foreign political organisation. It is limited specifically to the situation where the foreign government or foreign political organisation holds more than 15% of the issued share capital of the company.

160. Subparagraph (a)(ii) of the definition applies where the foreign principal holds more than 15% of the voting power in the company.

161. Subparagraph (a)(iii) of the definition applies where the foreign principal is in a position to appoint at least 20% of the company's board of directors.

162. Subparagraph (a)(iv) of the definition applies where 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. This subparagraph will apply where the directors are under an obligation relating to their role in the company or the activities of the company rather than their personal capacity. It will not apply to obligations with which all persons are obliged to comply. For example, all persons are under an obligation to obey the law of a foreign country, and this will not be sufficient for this subparagraph to be satisfied.

163. The reference to 'accustomed' is intended to refer to situations where the person is accustomed to acting in accordance with the directions, instructions or wishes of the foreign principal in their position as director. It does not apply simply because a director has

previously held a position in which he or she was accustomed to acting in accordance with the directions, instructions or wishes of the foreign principal. For example, a company may appoint a director who formerly held a senior position in the public service of a foreign country. In that context, the person would have been accustomed to acting in accordance with the directions of the foreign government as their employer. This would not be sufficient (in isolation) to mean that the company that had this director would be a foreign government related entity. The reference to ‘accustomed’ in this subparagraph implements Recommendation 3 of the PJCIS report

164. Subparagraph (a)(v) of the definition applies where the foreign principal is in a position to exercise, in any other way, total or substantial control over the company. The reference to ‘substantial’ control is intended to convey that the foreign principal must exercise a considerable amount of control, or must control the essential aspects of the company, rather than just having a small or trivial level of control.

165. Paragraph (b) of the definition applies where the person is not a company – for example a partnership or an association.

166. Subparagraph (b)(i) of the definition applies where 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. As with subparagraph (a)(iv) of the definition, this subparagraph will apply where the directors are accustomed, or under an obligation, relevant to their role in the company or the activities of the company rather than their personal capacity. It will not apply to obligations with which all persons are obliged to comply. For example, all persons are under an obligation to obey the law of a foreign country, and this will not be sufficient for this subparagraph to be satisfied.

167. Subparagraph (b)(ii) applies where the foreign principal is in a position to exercise, in any other way, total or substantial control over the person. As with subparagraph (a)(v) of the definition, the reference to ‘substantial’ control is intended to convey that the foreign principal must exercise a considerable amount of control, or must control the essential aspects of the company, rather than just having a small or trivial level of control.

168. Paragraph (c) of the definition applies where the foreign principal is a ***foreign political organisation*** (as defined in section 10) and the person is a ***person*** (other than an individual or body politic). This paragraph applies where:

- 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
- 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.

169. Paragraph (c) of the definition would apply where, for example, the law of a country requires all companies of a particular size to have a person who is a member of a governing political party as a member of the company’s board of directors.

170. The Note to this definition provides that a transparency notice issued under Division 3 of Part 1 may state that a person is a foreign government related entity. If a notice is issued, the person stated in the notice is a ***foreign government related entity*** and therefore a ***foreign principal*** for the purposes of the scheme.

171. ***Foreign government related individual*** is defined mean an individual:

- who is neither an Australian citizen nor a permanent Australian resident, and
- 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:
 - 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, or
 - the foreign principal is in a position to exercise, in any other way, total or substantial control over the individual.

172. This definition will only apply to individuals who are neither Australian citizens nor Australian permanent residents. It will apply where the foreign principal is a ***foreign government, foreign political organisation or foreign government related entity*** as defined in section 10.

173. Subparagraph (b)(i) of the definition applies where 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. It will not apply to obligations with which all persons are obliged or accustomed to comply. For example, all persons are under an obligation to obey the law of a foreign country, and this will not be sufficient for this subparagraph to be satisfied.

174. Subparagraph (b)(ii) of the definition applies where the foreign principal is in a position to exercise, in any other way, total or substantial control over the individual. The reference to ‘substantial’ control is intended to convey that the foreign principal must exercise a considerable amount of control over the individual, rather than just having a small or trivial level of control.

175. The Note to this definition provides that a transparency notice issued under Division 3 of Part 1 may state that a person is a foreign government related individual. If a notice is issued, the person stated in the notice is a ***foreign government related individual*** and therefore a ***foreign principal*** for the purposes of the scheme.

176. ***Foreign political organisation*** is defined to include:

- a foreign political party, and
- a foreign organisation that exists primarily to pursue political objectives.

177. The reference to foreign political parties in paragraph (a) of the definition is intended to cover political parties that are formally recognised or registered in a foreign country or part

of a foreign country. It is also intended to cover organisations that are akin to, and engage with the political system of the relevant country in the same way as, a formally recognised political party, even if that country does not have a system of registration for political parties.

178. Paragraph (b) covers foreign organisations that exist primarily to pursue political objectives. This paragraph is intended to capture organisations that have a political focus but are not ‘political parties’ per se. It is not intended to cover charitable or advocacy organisations who have charitable or other goals as their primary objective (for example, environmental protection or social policy objectives). The fact that engagement with the political system is an important means to progress these objectives would not mean that the organisations exist primarily to pursue political objectives.

179. ***Foreign principal*** is defined to mean:

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

180. The terms ***foreign government***, ***foreign government related entity*** and ***foreign political organisation*** and ***foreign government related individual*** are separately defined in section 10.

181. ***Former Cabinet Minister*** will be defined to mean, at a particular time, a person:

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

182. This definition is relevant for the purpose of section 22 of the Act which creates a requirement for former Cabinet Ministers to register under the scheme in certain circumstances.

183. Consistent with the *Acts Interpretation Act 1901*, a ‘Minister’ means one of the Ministers of State for the Commonwealth, and ‘Parliament’ means the Parliament of the Commonwealth.

184. ***General political lobbying*** is defined to mean lobbying any one or more of the following:

- a Commonwealth public official
- a Department, agency or authority of the Commonwealth
- a registered political party, or
- a candidate in a federal election

other than lobbying that is *parliamentary lobbying*.

185. **Lobby** is defined in section 10 to include communicating in any way with a person or a group of persons for the purpose of influencing any process, decision or outcome, or otherwise representing the interests of a person in any process.

186. **General political lobbying** therefore includes:

- communicating with a Commonwealth public official, a Department, agency or authority of the Commonwealth, a registered political party or a candidate in a federal election for the purpose of influencing a process, decision or outcome, or
- representing the interests of another person in a process involving a Commonwealth public official, a Department, agency or authority of the Commonwealth, a registered political party or a candidate in a federal election.

187. The definition of **general political lobbying** specifically provides that it only covers lobbying to the extent that the lobbying does not fall within the definition of **parliamentary lobbying**, which is defined in section 10 and is limited to lobbying of members of Parliament or staff employed under the *Members of Parliament (Staff) Act 1984*.

188. **Influence** is defined to include affect in any way. The definition of **influence** is relevant to the definition of **activity for the purpose of political or government influence** in section 12 of the Act. The definition of **influence** is intended to cover direct and indirect influence, and is not limited to the sole or dominant influence over a process, decision or outcome. In addition to changing processes, decisions and outcomes, influence is also intended to include attempts to maintain the status quo.

189. **Liable to register** is defined to have the meaning given by section 18. Section 18 provides that a person becomes liable to register under the scheme in relation to a foreign principal if the person undertakes an activity on behalf of a foreign principal that is a registrable activity, or enters into a registrable arrangement with a foreign principal. Subsection 18(2) clarifies that a person continues to be liable to register under the scheme until they cease to be liable under section 19. A person can only cease to be liable under section 19 if they no longer undertake registrable activities on behalf of a foreign principal, or if no registrable arrangement is in existence. A person will be liable to register under the scheme if there is a registrable arrangement in place with a foreign principal, even if no registrable activities are actually undertaken.

190. **Lobby** is defined to include:

- communicating in any way with a person or group of persons for the purpose of influencing a process, decision or outcome, or
- otherwise representing the interests of a person in any process.

191. The definition of **lobby** is non-exhaustive and the term is intended to capture all circumstances in which a person represents the interests of another person, whether in formal or informal processes or proceedings.

192. The definition of **lobby**, which is incorporated into the definitions of **general political lobbying** and **parliamentary lobbying**, is intended to focus on ‘communication’ that is directed at the person, or group of persons, mentioned in this definition (and thereby to the limited categories of people listed in the definitions of **general political lobbying** and **parliamentary lobbying**). It is not intended to capture the communication or distribution of information to the public, or to a section of the public, which forms part of the definition of **communications activity** in section 13.

193. **On behalf of** a foreign principal is defined to have the meaning given to it by section 11. Section 11 provides that an activity is undertaken on behalf of a foreign principal if :

- the person undertakes the activity in any of the following circumstances:
 - under an arrangement with the foreign principal
 - in the service of the foreign principal
 - on the order or at the request of the foreign principal
 - under the direction of the foreign principal, and
- 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:
 - the person would or might undertake the activity, and
 - 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).

194. A person is considered to undertake an activity **on behalf of** a foreign principal if both the person and the foreign principal knew or expected the person would or might undertake the activity. This definition is not intended to cover circumstances where a person undertakes an activity with no knowledge, awareness or direction from the foreign principal or where the relationship between the person’s activities and the foreign principal’s interests is merely coincidental.

195. **Parliamentary lobbying** is defined to mean lobbying a member of the Parliament or a person employed under the *Members of Parliament (Staff) Act 1984*. Consistent with the definition of **lobby** in section 10, **parliamentary lobbying** will include:

- communicating in any way with a member of the Parliament or a person employed under the MOPS Act (or a group of such persons) for the purpose of influencing a process, decision or outcome, or
- otherwise representing the interests of a person in any process involving a member of the Parliament or a person employed under the MOPS Act (or a group of such persons).

196. **Person** means an individual, a body corporate, a body politic, a partnership, an association (whether or not incorporated), an organisation (whether or not incorporated), any combination of individuals who together constitute a body, or any body of a kind prescribed by the rules. Under this definition, a person need not be a resident in Australia, be formed or created in Australia, be carrying on a business within Australia, or be constituted under a law of Australia.

197. **Political or governmental influence** will have the meaning given to it by section 12. Section 12 sets out a broad definition of political or governmental influence, which is intended to capture all of the persons, entities, structures or processes that are part of Australia's political and governmental architecture. The definition includes influencing any aspect of a federal election or vote, a federal government decision, a proceeding of either House of the Parliament, a registered political party, an independent member of Parliament, or an independent candidate in a federal election. The definition is relevant to a number of provisions of this Act, particularly the requirement at section 21 that certain activities undertaken on behalf of a foreign principal must be done for the purpose of political or governmental influence in order to be captured by the scheme.

198. **Provisional transparency notice** has the meaning given in subsection 14B(1) Subsection 14B(1) defines a **provisional transparency notice** to mean a notice issued by the Secretary stating that a particular person is a foreign government related entity or a foreign government related individual. The Secretary may issue such a notice if the Secretary is satisfied that a person is a foreign government related entity or foreign government related individual.

199. **Purpose** will have a meaning affected by section 14. **Purpose** will have its ordinary meaning, which includes the reason for which something is done or to have something as a person's intention or objective. Section 14 provides that the purpose of an activity must be determined by having regard to:

- the intention or belief of the person undertaking the activity, and
- either or both of the following:
 - the intention of any foreign principal on whose behalf the activity is undertaken
 - all of the circumstances in which the activity is undertaken.

200. A **recent designated position holder** will be defined to mean, at a particular time, a person:

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

201. **Designated position holder** will be defined to mean any of the following:

- a Minister

- a member of the Parliament
- 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
- an Agency Head (within the meaning of the *Public Service Act 1999*)
- a deputy agency head (however described)
- the holder of an office established by or under a law of the Commonwealth and equivalent to that of an 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 of Australia.

202. This definition is relevant for the purposes of section 23 of the Act, which requires **recent designated position holders** to register under the scheme if, in undertaking a registrable activity on behalf of a foreign principal, the person contributes experience, knowledge, skills or contacts gained in the person's former capacity.

203. **Referendum** is defined to have the same meaning as in the Referendum (Machinery Provisions) Act. **Referendum** is defined in section 3 of that Act to mean the submission to the electors of a proposed law for the alteration of the Constitution.

204. **Registered** is defined to have the meaning given to it by section 17. Section 17 provides that a person is registered under the scheme in relation to a foreign principal from the day that an application for registration is given to the Secretary in accordance with the requirements of section 17, until registration ends under section 32. Registration ends under section 32 when a person fails to renew their registration, notifies the Secretary that their registration has ended (or will end), or in circumstances prescribed by the rules.

205. **Registered political party** is defined to have the same meaning as in the Commonwealth Electoral Act. Under the Commonwealth Electoral Act, an eligible political party (that is, a Parliamentary party which is a political party at least one member of which is a member of the Parliament of the Commonwealth, or a political party that has at least 500 unique members who are also Commonwealth electors, and which is established on the basis of a written constitution, however described, setting out the aims of the party) may become a registered political party. A party can only be a 'political party' for the purposes of the Commonwealth Electoral Act if the object or activity, or one of the objects or activities, of the organisation is the promotion of the election of a candidate or candidates endorsed by it to the Senate or the House of Representatives (see section 4 of that Act). By virtue of these definitions under the Commonwealth Electoral Act, a registered political party is limited in the Act to registered political parties in relation to the Parliament of the Commonwealth, and not in relation to State and Territory parliaments (however described). Therefore, a party that only seeks to promote candidates in State or Territory elections would not be captured by the Act. However, State branches of political parties that endorse candidates in federal elections *are* captured by both the Commonwealth Electoral Act and this Act. This is appropriate and necessary given the influential role State branches play within the governance of political parties in federal elections.

206. **Registrable** activity in relation to a foreign principal is defined to have the meaning provided by sections 20, 21, 22 and 23. These sections set out the circumstances in which an activity is considered to be a registrable activity. Whether an activity is a registrable activity is determined by the identity of the foreign principal, the nature of the activities, the identity of the person undertaking the activities, and the purpose for which the activities are undertaken.

207. **Registrable arrangement** is defined to have the meaning given to it by section 13A. Subsection 13A(1) provides that 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. Subsection 13A also provides that an arrangement will not be 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.

208. **Registrant** is defined to mean a person who is registered under the scheme.

209. **Renewal period** is defined to have the meaning given to it by subsection 39(3). Subsection 39(3) provides that the renewal period for a year is the annual anniversary of the day on which the person registered in relation to the foreign principal, plus one month.

210. **Rules** is defined to mean rules made under section 71 of the Act. Section 71 provides that the Minister may make rules prescribing matters required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Any rules made under section 71 are legislative instruments under the *Legislation Act 2003*.

211. **Scheme** is defined to mean the Act and the rules prescribed under section 71 .

212. **Scheme information** is defined to have the meaning given to it by section 50. Section 50 provides that information is **scheme information** if it was obtained by a **scheme official** (as defined in section 10) in the course of performing functions or exercising powers under the scheme. Such information continues to be scheme information if it is communicated consistent with the authorisations under Division 4 of Part 4 of the Act.

213. **Scheme official** is defined to have the meaning given to it by section 51. Section 51 defines a **scheme official** to be the Secretary, an APS employee in the Department to whom a function or power of the scheme is delegated under section 69 or whose functions otherwise include functions in relation to the scheme, or any other person who performs functions in relation to the scheme under an arrangement with the Commonwealth. This definition is broadly framed and is intended to extend to secondees (whether or not they are APS employees), contractors and sub-contractors.

214. **Secretary** is defined to mean the Secretary of the Department. This will be the Secretary of the Department that has responsibility for the administration of the scheme.

215. **Transparency notice** will have the meaning given to it by subsection 14A(2). Subsection 14A(2) provides that **transparency notice** means:

- a provisional transparency notice (see subsection 14B(1)), or
- a final transparency notice (see paragraph 14C(4)).

216. Subsection 14B(1) defines a ***provisional transparency notice*** to mean a notice issued by the Secretary stating that a particular person is a foreign government related entity or a foreign government related individual. The Secretary may issue such a notice if the Secretary is satisfied that a person is a foreign government related entity or foreign government related individual.

217. Subsection 14C(4) provides that if the Secretary does not revoke a provisional transparency notice before the end of the 28 day period within which a person may make submissions, the provisional transparency notice becomes a ***final transparency notice***. The notice then remains in force until revoked (consistent with paragraph 14D(b)).

218. ***Voting period*** is defined to mean:

- for a federal election—the period:
 - beginning on the day of the issue of the writ for the election under the Commonwealth Electoral Act, and
 - ending at the time determined in accordance with the Commonwealth Electoral 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
- for a referendum—the period:
 - beginning on the day of the issue of the writ for the referendum under the Referendum Act, and
 - ending at the time determined in accordance with the Referendum 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
- 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.

219. This definition covers the time when influence is most readily exerted over a federal election, referendum or designated vote. The periods end once the time for voting ends as, after this time, the result cannot be influenced.

Section 11 – Undertaking activity on behalf of a foreign principal

220. Section 11 defines ***on behalf of*** for the purposes of the scheme. Section 11(1) provides that a person undertakes an activity ***on behalf of*** a foreign principal if:

- the person undertakes the activity in any of the following circumstances:
 - under an arrangement with the foreign principal
 - in the service of the foreign principal
 - on the order or at the request of the foreign principal
 - under the direction of the foreign principal, and
- 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:
 - the person would or might undertake the activity, and
 - 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).

221. **Foreign principal** is defined in section 10.

222. Subparagraph 11(1)(a)(i) provides that a person is undertaking an activity **on behalf of** a foreign principal if the person undertakes the activity under an arrangement with the foreign principal. **Arrangement** is broadly defined in section 10 to include a contract, agreement, understanding or other arrangement of any kind, whether written or unwritten.

223. Subparagraph 11(1)(a)(ii) provides that a person is undertaking an activity **on behalf of** a foreign principal if the person undertakes the activity in the service of the foreign principal. The term ‘in the service of’ is not defined and is intended to cover situations where the person’s activities fall short of being ordered, directed or requested by the foreign principal, but are still helping or meeting the needs of the foreign principal. There will still need to be a connection between the actions of the person and the foreign principal. It will not be sufficient for the person to unilaterally decide that they are undertaking particular activities ‘in the service of’ a foreign principal. The foreign principal must be, in some way, seeking or overseeing the activities.

224. Subparagraph 11(1)(a)(iii) provides that a person is undertaking an activity **on behalf of** a foreign principal if the person undertakes the activity on the order or at the request of the foreign principal. This covers the situation where the person and the foreign principal do not have a formal or informal ‘arrangement’, but the foreign principal orders or requests a person to undertake particular activities.

225. These terms are not defined and are intended to take their ordinary meanings.

- **Orders** is intended to cover commands or instructions.
- **Requests** is intended to include a person asking, whether formally or informally, for someone to do something.

226. Subparagraph 11(1)(a)(iv) provides that a person is undertaking an activity **on behalf of** a foreign principal if the person undertakes the activity under the direction of the foreign principal. **Under the direction** is not defined and is intended to take its ordinary meaning,

including to cover the management or guidance of the person's activities by the foreign principal.

227. Paragraph 11(1)(b) provides that, at the time of making or entering into the arrangement, service, order, request or direction, both the person and the foreign principal must know or expect that the person would or might undertake the activity and that 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). This ensures that a person does not need to register simply because their views align with those of a foreign principal, in a situation where the foreign principal has no ability to know that the person will or might engage in registrable activities.

228. An activity may still be undertaken *on behalf of* a foreign principal where the relationship with the foreign principal is not the only impetus for the person undertaking the activity. For example, a person may receive a request from both a foreign principal and a domestic actor to engage in parliamentary lobbying activities for the purpose of political or governmental influence. The fact that the person receive a request from a domestic actor does not negate the fact that the person is acting on behalf of the foreign principal when they engage in parliamentary lobbying activities.

229. Subsection 11(3) provides that 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) of a foreign principal.

230. A *company* is registered under the Corporations Act once it has applied to the Australian Security and Investment Commission (ASIC) to be registered as a company and been formally issued with an Australian Company Number.

231. A *subsidiary* is defined in section 46 of the Corporations Act to mean a body corporate (the first body) that is a subsidiary of another body corporate (the other body) if, and only if:

- the other body:
 - controls the composition of the first body's board; or
 - is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or
 - holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital), or
- the first body is a subsidiary of a subsidiary of the other body.

232. This amendment clarifies that a local subsidiary of a foreign principal is not taken to be acting on behalf of the foreign principal merely because it is owned, in whole or in part, by that foreign principal. This amendment ensures that Australian companies are not considered

to be acting on behalf of a foreign principal simply because they are a local subsidiary of, or are owned by, a foreign principal.

233. While a company will not be considered to be acting on behalf of a foreign principal simply by virtue of being a subsidiary of a foreign principal, the company will not be fully exempt from the scheme. For example, if a local subsidiary is directed by its foreign owner to engage in registrable activities in Australia, and the foreign owner falls within the definition of foreign principal under the scheme, the local subsidiary may be considered to be acting on behalf of a foreign principal due to subparagraph 11(1)(a)(iv).

Section 12 – Activity for the purpose of political or governmental influence

234. Subsection 12(1) provides that 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 process in relation to a federal election or a designated vote
- a process in relation to federal government decision
- proceedings of a House of the Parliament
- a process in relation to a registered political party
- a process in relation to a member of Parliament who is not a member of a registered political party, or
- a process in relation to a candidate in a federal election who is not endorsed by a registered political party.

235. The definition in section 12 is relevant to a number of provisions in the Act, particularly the requirement at section 21 that the activities be done for the purpose of political or governmental influence. For example, engaging in certain lobbying activities, communications activities or disbursement activities will only require registration under the scheme if they are done for the purpose of ***political or governmental influence***. Any influence over these processes could have significant implications for Australia public policy, and it is critical that there is transparency around foreign influence over these processes.

236. The terms ‘sole or primary purpose’ and ‘substantial purpose’ are not defined and will be given their ordinary meaning. The term *sole* is intended to convey that an activity undertaken for political or governmental influence must be able to be completely and wholly considered as being done for political or governmental influence. The term *primary* is intended to convey that the chief, principal or most important purpose of the activity is political or governmental influence. The term *substantial* is intended to convey that an activity undertaken for political or governmental influence must be an ample or considerable amount of the purpose of the activity.

237. Purposes which are slightly connected or trivial will not be sufficient to meet these criteria. For example, if an academic enters into an arrangement with a foreign principal to study a particular area and produce original research and analysis then this will be the

primary purpose of those activities. The fact that it is possible that the results of the research will be conveyed to the government in future to inform policy development would be an incidental purpose, and would not fall within the definition in section 12.

238. Paragraph 12(1)(a) provides that a person undertakes an activity for the purpose of ***political or governmental influence*** if a purpose of the activity is to influence any aspect of a process in relation to federal election or a designated vote.

239. Consistent with the definitions in section 10:

- a ***federal election*** means an election of a member of the House of Representatives and an election of Senators for a State or Territory.
- a ***designated vote*** means a referendum, or a vote, survey or other process for the expression of opinion, which has been prescribed by the rules for the purposes of this paragraph.

240. Paragraph 12(1)(b) provides that a person undertakes an activity for the purpose of ***political or governmental influence*** if a purpose of the activity is to influence any aspect of a process in relation to a federal government decision. Subsection 12(3) provides a number of examples of federal government decisions for the purposes of paragraph 12(1)(b). The examples are decisions made by:

- the Executive Council
- the Cabinet or a committee of the Cabinet
- a Minister or Ministers
- a Commonwealth entity (within the meaning of the Public Governance Act) or a subsidiary of a Commonwealth entity (within the meaning of that Act)
- a Commonwealth company (within the meaning of the Public Governance Act), or
- an individual in the course of performing his or her functions in relation to a person or body mentioned in an above paragraph.

241. An example of an activity for the purpose of influencing a federal government decision is lobbying a Minister to make a particular decision under an Act administered by that Minister.

242. Subsection 12(4) provides that, for the purposes of paragraph 12(1)(d) and subsection 12(3), a reference to a decision includes a decision of any kind, including regarding administrative, legislative and policy matters, whether or not the decision is a final or formal decision.

243. Paragraph 12(1)(c) provides that a person undertakes an activity for the purpose of ***political or governmental influence*** if a purpose of the activity is to influence any aspect of proceedings of a House of the Parliament. For example, this would include influencing a

member of the Parliament in relation to a formal vote, such as on a Bill or on a procedural matter.

244. Paragraph 12(1)(d) provides that a person undertakes an activity for the purpose of ***political or governmental influence*** if a purpose of the activity is to influence any aspect of a process in relation to a registered political party. Subsection 12(5) provides a number of examples of processes in relation to a registered political party for the purposes of paragraph 12(1)(d). The examples of processes in relation to a registered political party are:

- processes relating to the party's:
 - constitution
 - platform
 - policy on any matter of public concern
 - administrative or financial affairs
 - membership, or
 - relationship with foreign principals
- the conduct of the party's campaign in relation to a federal election or a designated vote
- the selection and endorsement of the party's candidates in relation to a federal election
- the allocation of the party's preferences in relation to a federal election
- the selection (however done) of:
 - officers of the party's executive, or
 - delegates to party conferences
- the election of a person to be the leader of the party in the Parliament of the Commonwealth, or
- the selection (however done) of persons to be:
 - Ministers, or
 - shadow Ministers or party spokespersons (however described) in relation to the Commonwealth.

245. An example of an activity for the purpose of influencing a process in relation to a registered political party is writing to all members of a political party advocating that they vote for a particular candidate in the selection of officers of the party's executive.

246. Paragraph 12(1)(e) provides that a person undertakes an activity for the purpose of ***political or governmental influence*** if a purpose of the activity is to influence any aspect of a process in relation to a member of the Parliament who is not a member of a registered political party. Paragraph 12(1)(f) provides that a person undertakes an activity for the purpose of political or governmental influence if a purpose of the activity is to influence any aspect of a process in relation to a candidate in a federal election who is not endorsed by a registered political party.

247. Paragraph 12(1)(e) and (f) ensure that activities to influence independent members of the Parliament and independent candidates are covered in the same way as members or candidates of registered political parties.

248. Subsection 12(6) provides a number of examples of processes in relation to independent members of Parliament and candidates for the purposes of paragraphs 12(1)(e) and (f). The examples of processes in relation to independent members of Parliament and candidates in a federal election are processes that relate to:

- the person's platform
- the person's policy on any matter of public concern
- the person's administration or financial affairs in his or her capacity as a member of the Parliament or candidate in a federal election
- the person's relationship with foreign principals
- the person's conduct of his or her campaign, or
- the person's allocation of preferences in relation to a federal election.

249. An example of an activity for the purpose of influencing a process in relation to an independent candidate is lobbying the candidate to allocate their preferences to a registered political party in an upcoming federal election.

250. These characteristics of Australia's democracy and system of government mean that the Australian public is empowered to exert a real impact on Australia's governmental and political processes. Actions undertaken to influence the public's opinions and actions about Australia's governmental and political processes have the potential to have real and tangible consequences on those governmental and political processes. It is essential that activities aimed at influencing the public fall within the scope of the scheme.

251. The examples in subsections 12(3), (5) and (6) of the Act are not exhaustive lists of all federal government decisions, processes in relation to a registered political party and processes in relation to members of Parliament and candidates in a federal election. Section 15AD of the Acts Interpretation Act provides that, if an Act includes an example of the operation of the provision, the example is not exhaustive, and may extend the operation of a provision. As such, the examples listed in subsections 12(3), (5) and (6) are not intended to limit the possible matters that may be considered to be processes which may be subject to political or governmental influence under subsection 12(1).

252. Subsection 12(2) provides a person also undertakes an activity for the purpose of political and 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 12(1).

253. The terms ‘sole or primary purpose’ and ‘substantial purpose’ are not defined and will be given their ordinary meaning. The term *sole* is intended to convey that an activity undertaken for political or governmental influence must be able to be completely and wholly considered as being done for political or governmental influence. The term *primary* is intended to convey that the chief, principal or most important purpose of the activity is political or governmental influence. The term *substantial* is intended to convey that an activity undertaken for political or governmental influence must be an ample or considerable amount of the purpose of the activity.

254. Purposes which are slightly connected or trivial will not be sufficient to meet these criteria. For example, if an academic enters into an arrangement with a foreign principal to study a particular area and produce original research and analysis then this will be the primary purpose of those activities. The fact that it is possible that the results of the research will be conveyed to the government in future to inform policy development would be an incidental purpose, and would not fall within the definition in section 12.

Section 13 – Communications activity

255. Subsection 13(1) provides that a person undertakes ***communications activity*** if the person communicates or distributes information or material to the public or a section of the public. The terms *communicates* and *distributes* are to be given their ordinary meaning, and are intended to cover all circumstances in which information or materials are disseminated, published, disbursed, shared or made available in any way. For example, information is communicated or distributed for the purposes of this section if done so via a newspaper, a magazine, an editorial, a book, a periodical, on social media, or on another online platform.

256. The definition of ***communications activity*** is relevant for a number of provisions in the Act, and is a category of registrable activity under section 21.

257. Subsection 13(2) clarifies that a reference to material in subsection 13(1) includes information or material in any form, including oral, visual, graphic, written, electronic, digital and pictorial forms. This inclusive definition is intended to provide clarity about the broad range of forms that can constitute ‘information or material’ for the purposes of the definition of ***communications activity***.

258. Subsection 13(3) provides that an activity undertaken by a person (the disseminator) is not ***communications activity*** if:

- the activity is undertaken in the ordinary course of the disseminator’s business
- the activity is communicating or distributing, to the public or a section of the public, information or material:
 - produced entirely by a person other than the disseminator, or

- 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
- the identity of:
 - if the producer produced the information or material on behalf of another person—that other person, or
 - otherwise—the producer of the information or material;

is either apparent in the communicating or distributing or is disclosed in accordance with the rules.

259. The term *in the ordinary course of the disseminator's business* is not defined and will be given their ordinary meaning. The terms are intended to refer to the dissemination of information or material which is customary or normal in the disseminator's occupation, profession or trade.

260. The terms *communicates* and *distributes* are to be given their ordinary meaning, and are intended to cover all circumstances in which information or materials are disseminated, published, disbursed, shared or made available in any way. For example, information is communicated or distributed for the purposes of section 13 if done so via a television program, newspaper, a magazine, an editorial, a book, a periodical, on social media, or via another online platform.

261. The requirement in subsection 13(3) that the identity of the producer is apparent from the information or material disseminated limits the scope of the exemption, and seeks to guard against non-transparent publications and or/broadcasts. It seeks to ensure that foreign principals cannot exploit the exemption by using a disseminator as a vehicle for foreign influence. Examples of where the identity of the producer would be apparent from the information or material disseminated include:

- where a television station broadcasts a program produced by another media organisation and that other media organisation's logo is displayed
- where a television or radio station broadcasts a short segment of content produced by another media organisation in the course of one of the station's own news bulletins, and the station verbally identifies the media organisation that produced the content
- where a print or online newspaper publishes an advertisement produced by a company (or on whose behalf an advertisement was produced by an advertising agency), and the company's logo is displayed
- where a television or radio station interviews a foreign government official, and the fact that the interviewee is an official of that foreign government is disclosed in the interview, and
- where the disclosure is made in accordance with the rules.

262. Media organisations, publishers and other disseminators will not be required to register under the scheme if the identity of the foreign principal is already transparent. A disseminator should not be required to register if they disseminate (on behalf of a foreign principal, for the purpose of political or governmental influence), for example, an opinion-editorial or a book where the author's name is stated in the by-line or on the cover. However, if the disseminator broadcasts or publishes the material as though it was native content, thereby concealing the provenance of the material, registration should be required. For example, registration may be required where a disseminator publishes material given to a newspaper as an editorial, as though it were the newspaper's own position.

263. Revised subsection 13(4) retains the current exemption for carriage service providers in existing subsection 13(3). A specific exemption for carriage service providers recognises that carriage service providers do not communicate or distribute material in the ordinary course of their business, but rather provide the means by which information or material is communicated or distributed.

264. A carriage service provider has the same meaning as section 87 of the *Telecommunications Act 1997*. Section 87 provides a basic definition which provides that a person is a **carriage service provider** if the person supplies, or proposes to supply, a listed carriage service to the public using:

- a network unit owned by one or more carriers, or
- a network unit in relation to which a nominated carrier declaration is in force.

265. Consistent with subparagraph 13(3)(b)(i), a person who communicates or distributes to the public information or material produced entirely by another person, will not be required to register under the scheme, as long as the identity of the person who produced the material is apparent.

266. Consistent with subparagraph 13(3)(b)(i), a person who communicates or distributes information or material to the public will not be required to register merely because they produced information or material to the extent that they altered the material, without affecting substance, to ensure compliance with the law or to fit time or space constraints. This could occur, for example, when a disseminator shortens a television program produced by a foreign principal by a few seconds so that it fits into an allocated timeslot.

Section 13A – Registrable arrangement

267. Subsection 13A(1) provides that 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.

268. Subsection 13A also provides that an arrangement will not be 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. This clarifies that the exemptions in Division 4 of Part 2 apply to both registrable arrangements and registrable activities.

Section 14 – Purpose of activity

269. Section 14 provides that the purpose of an activity must be determined by having regard to:

- the intention or belief of the person undertaking the activity, and
- either or both of the following:
 - the intention of any foreign principal on whose behalf the activity is undertaken
 - all of the circumstances in which the activity is undertaken.

270. Under new section 14, it will be clear that the intention or belief of the person undertaking the activity must always be considered when determining the purpose of the activity and either the intention of the foreign principal or all of the other circumstances must also be considered.

Division 3—Transparency notices

271. This Division provides that the Secretary may issue a transparency notice if the Secretary is satisfied that a person is a ***foreign government related entity*** or a ***foreign government related individual***.

Section 14A – Transparency notices

272. Subsection 14A(1) provides that, for the purposes of the Foreign Influence Transparency Scheme Act:

- 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
- 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.

273. This has the effect that, if a transparency notice is in force, then the person or entity named in it will be a ***foreign government related entity*** or ***foreign government related individual*** (as the case requires) for the purposes of the definitions in section 10. In turn, the person or entity will therefore be a ***foreign principal*** for the purposes of the definition in section 10.

274. A ***foreign government related entity*** is defined in section 10 to mean a person, other than an individual, who is related to a foreign government or foreign political organisation in one or more of the following ways:

- if the person if the person is a company, one of more of the following applies:
 - the foreign principal holds more than 15% of the issued share capital of the company

- the foreign principal holds more than 15% of the voting power in the company
- the foreign principal is in a position to appoint at least 20% of the company's board of directors
- 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
- the foreign principal is in a position to exercise, in any other way, total or substantial control over the company
- if the person is not a company, either of the following applies:
 - 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, or
 - the foreign principal is in a position to exercise, in any other way, total or substantial control over the person
- if the person is not a company, or falls within paragraphs (d) to (h), of the definition of **person** in section 10 and the foreign principal is a foreign political organisation:
 - a director or 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
 - 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.

275. A *foreign government related individual* will be defined in section 10 to mean an individual:

- who is neither an Australian citizen nor a permanent Australian resident, and
- 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:
 - 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, or
 - the foreign principal is in a position to exercise, in any other way, total or substantial control over the individual.

276. Both a ***foreign government related entity*** and a ***foreign government related individual*** are included in the definition of ***foreign principal*** in section 10.

277. Subsection 14A(1) refers to a transparency notice being ‘in force’. Section 14D provides for when a transparency notice is in force. This is reflected in the Note under subsection 14A(1).

278. Subsection 14A(2) provides a definition of ***transparency notice***. This definition provides that ***transparency notice*** means a provisional transparency notice or a final transparency notice. Section 14B provides for the making of provisional transparency notices. Section 14C(4) provides for when a provisional transparency notice becomes a final transparency notice.

Section 14B – Provisional transparency notice

279. Section 14B provides for the Secretary to issue a provisional transparency notice in relation to a person where the Secretary is satisfied that a person is a foreign government related entity or a foreign government related entity, as the case requires.

280. Subsection 14B(1) provides that, 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).

281. A ***foreign government related entity*** will be defined in section 10 to mean a person, other than an individual, who is related to a foreign government or foreign political organisation in one or more of the following ways:

- if the person is a company, one of more of the following applies:
 - the foreign principal holds more than 15% of the issued share capital of the company
 - the foreign principal holds more than 15% of the voting power in the company
 - the foreign principal is in a position to appoint at least 20% of the company’s board of directors
 - 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
 - the foreign principal is in a position to exercise, in any other way, total or substantial control over the company
- if the person is not a company, either of the following applies:
 - 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, or

- the foreign principal is in a position to exercise, in any other way, total or substantial control over the person;
- if the person is not a company, or falls within paragraphs (d) to (h), of the definition of **person** in section 10 and the foreign principal is a foreign political organisation:
 - a director or 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
 - 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.

282. A **foreign government related individual** will be defined in section 10 to mean an individual:

- who is neither an Australian citizen nor a permanent Australian resident, and
- 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:
 - 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, or
 - the foreign principal is in a position to exercise, in any other way, total or substantial control over the individual.

283. Consistent with subsection 14A(1), a provisional transparency notice will be a **transparency notice** and, for the period that the notice is in force, means that the person stated in the provisional transparency notice is taken to be a foreign government related entity or foreign government related individual (as the case requires).

284. Section 14D provides for when a transparency notice is in force. For a **provisional transparency notice**, paragraph 14D(a) provides that a provisional transparency notice comes into force on the day the notice is first made available to the public on a website under subsection 43(2A) and paragraph 14D(b) provides that it remains in force until revoked.

285. The Secretary must personally exercise the power in subsection 14B(1). Subsection 67(1A) provides that the Secretary must not delegate his or her functions or powers under section 14B.

286. The Note under subsection 14B(1) clarifies that 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. Section 46 enables the Secretary to issue a notice seeking information from a person if the Secretary reasonably believes that the person has information that is relevant to the operation of the scheme.

287. Paragraph 14B(2)(a) provides that a provisional transparency notice must be in writing. Consistent with the *Acts Interpretation Act 1901*, ‘writing’ includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form

288. Paragraph 14B(2)(b) requires a provisional transparency notice to include such details as the Secretary considers necessary to identify the person who is the subject of the notice. Given that a provisional transparency notice is made public, it is not appropriate to include further details in the notice itself.

289. Note 1 under subsection 14B(2) provides that the Secretary must make provisional transparency notices publicly available on a website in accordance with proposed subsection 43(2A). Subsection 43(2A) requires the Secretary to make available to the public, on a website, each provisional transparency notice issued under section 14B, along with:

- 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 AAT for review of the decision, and
- if the notice comes into force as a final transparency notice under subsection 14C(4) – a written statement to that effect.

290. Note 2 under subsection 14B(2) clarifies that section 14C provides for the person who is the subject of the notice to make submissions about the notice. Note 2 also clarifies that a decision by the Secretary to issue a transparency notice is reviewable in accordance with proposed section 14H, which provides that applications may be made to the Administrative Appeals Tribunal for review of a decision by the Secretary to issue a provisional transparency notice under subsection 14B(1) (see paragraph 14H(a)). The Note also clarifies that notice of review rights must be provided on the website with the provisional transparency notice (see subsection 43(2A)).

Section 14C – Submission in relation to a provisional transparency notice

291. Subsection 14C(1) provides that, if the Secretary issues a provisional transparency notice in relation to a person, the Secretary must also:

- prepare an invitation for the person in accordance with subsection 14C(2), and
- take reasonable steps to give the invitation to the person as soon as practicable.

292. The reference to taking ‘reasonable’ steps to give the invitation to the person in paragraph 14C(1)(b) reflects that the person named in the notice may not be located within Australia or the Secretary may not have an address for the person. The Secretary must take reasonable steps to identify an address for the person and to send the required information to the person.

293. Subsection 14C(2) sets out the details that must be included in the invitation that the Secretary is required to prepare under paragraph 14C(1)(a). The invitation must:

- invite the person to make submissions to the Secretary about the provisional transparency notice within 14 days of the date of the invitation
- set out the effect of sections 137.1 and 137.2 of the Criminal Code (false or misleading information or documents), and
- notify the person of the person's right to have certain decisions relating to the transparency notice reviewed.

294. This allows the person to receive a copy of the notice and make submissions to the Secretary about whether or not the person does fall within the relevant definition and to provide other relevant information.

295. Subsection 14C(3) provides that, 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. During this period, the person can provide factual or other information to the Secretary, who has the ability to vary or revoke transparency notices under subsection 14E.

296. Subsection 14C(4) provides that if the Secretary does not revoke a provisional transparency notice before the end of the period of 28 days after the date of the invitation then the provisional transparency notice becomes a *final transparency notice* from that date.

Section 14D – When a transparency notice is in force

297. Section 14D provides that a transparency notice:

- 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
- remains in force, whether as a provisional transparency notice or a final transparency notice, until revoked.

298. The requirement that the notice comes into force when it is made publicly available on the website reflects that, once in force, the person named in the notice is taken to be a *foreign principal* for the purpose of the scheme, which may enliven registration requirements for another person. It is appropriate that this requirement can only arise at a point in time when the provisional transparency notice is available to the public.

299. The Note under section 14D states that 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 (consistent with subsection 43(2A)).

Section 14E – Varying or revoking transparency notices

300. Subsection 14E(1) provides that 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 foreign government related individual (as the case requires) should be updated or corrected.

301. The effect of this subsection is to enable the Secretary to make corrections or updates to a transparency notice where it becomes clear, either through further investigation or through a person providing additional or updated details, that the details in the notice which identify a person as a foreign government related entity or a foreign government related individual are incorrect. For example, the Secretary may vary a transparency notice if the foreign government related entity to which it refers changes its name.

302. Subsection 14E(2) provides that the Secretary must revoke a transparency notice if the Secretary ceases to be satisfied that the person is a foreign government related entity or foreign government related individual (as the case requires).

303. The effect of this subsection is to require the Secretary to revoke a transparency notice issued in relation to a person when there is evidence that satisfies the Secretary that the person no longer falls within the definition of a foreign government related entity or a foreign government related individual. For example, the Secretary must revoke a transparency notice if the foreign government related entity changes its ownership structure and no longer meets the relevant criteria (for example, if 17% of its issued share capital was previously owned by a foreign government, but this is later reduced to 12%).

304. Subsection 14E(3) provides that a transparency notice must be in writing. Consistent with the Acts Interpretation Act, 'writing' includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form

305. Note 1 under subsection 14E(3) clarifies that the Secretary must make transparency notices publicly available in accordance with subsection 43(2A). Subsection 43(2A) requires the Secretary to make available to the public, on a website, any variation or revocation 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 AAT for review of the decision.

306. Note 2 under subsection 14E(3) clarifies that a decision by the Secretary to vary or revoke a transparency notice is reviewable under section 14H. Note 2 also states that notice of review rights must be provided on the website with the variation or revocation, consistent with subsection 43(2A).

Section 14F – Transparency notice is not a legislative instrument

307. Section 14F provides that a transparency notice, or a variation or revocation of a transparency notice, is not a legislative instrument.

308. This clarifies that a variation or revocation of a notice is not legislative in character and the provisions of the *Legislation Act 2003* which regulate matters relating to legislative instruments and notifiable instruments would not apply. Proposed section 14F is intended to be merely declaratory of the law, and is not intended to constitute a substantive exemption from the requirements of the Legislation Act.

Section 14G – Requirements in relation to procedural fairness

309. Section 14G provides that the Secretary is not required to observe any requirements of procedural fairness in issuing a transparency notice other than those set out in section 14C.

The effect of this subsection is to insert a clear legislative intention in the Act which will exclude the rules of procedural fairness that may otherwise be available to a person in these circumstances.

310. Section 14C requires the Secretary to take reasonable steps to give a person named in a provisional transparency notice an invitation to provide submissions about the provisional transparency notice. The Secretary has the ability to vary or revoke transparency notices under section 14E.

311. The process set out in section 14C allows the person named in the notice to have an opportunity to present any relevant facts or circumstances to the Secretary about whether the person satisfies the definition of *foreign government related entity* or *foreign government related individual*.

Section 14H—Review of decisions relating to transparency notices

312. Section 14H provides that applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Secretary:

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

313. The effect of this section is to provide legislative authority for the AAT to review certain decision relating to the Act. The AAT is an independent statutory agency which conducts independent merits reviews of administrative decisions made under Commonwealth legislation. The AAT can only exercise its powers where this is specifically provided for in the relevant legislation.

Section 14J—Protections against actions for defamation

314. Subsection 14J(1) provides that there is no action for defamation available 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:

- issues, varies or revokes a transparency notice
- includes a transparency notice, or any variation or revocation of a transparency notice, on the register
- makes available a transparency notice, or any variation or revocation of a transparency notice, on a website
- publishes or otherwise makes available, in any way, a transparency notice, or any variation or revocation of a transparency notice, or

- supplies or gives access to a draft transparency notice, or the draft of any variation or revocation of a transparency notice, to a Minister or Agency or any other person.

315. The effect of this subsection is to allow the Secretary and other relevant officers to undertake duties in relation to issuing, varying and revocation of a transparency notice without the threat of an action in defamation being brought against them.

316. Defamation is the communication from one person to at least one other person that harms the reputation of an identifiable third person. It is essential that transparency notices are made available publicly, so that it is clear to potential registrants that a person or entity is a foreign government related entity or foreign government related individual (as the case requires) and therefore a foreign principal for the purpose of the scheme. Therefore, this would likely constitute a communication of the information.

317. Consistent with the Acts Interpretation Act, ‘the Commonwealth’ means the Commonwealth of Australia, and a ‘Minister’ means one of the Ministers of State for the Commonwealth.

318. **Secretary** is defined in section 10 of the Act to mean the Secretary of the Department. This will be the Secretary of the Department that has responsibility for the administration of the scheme.

319. Consistent with the *Public Service Act 1999*, a ‘Department’ means a Department of State, excluding any part that is itself an Executive Agency or Statutory Agency, and an ‘Agency’ means a Department, an Executive Agency or a Statutory Agency.

320. Paragraph 14J(1)(a) refers to a decision to issue, vary or revoke a transparency notice. The Secretary may issue a provisional transparency notice in relation to a person under subsection 14B, and may vary a transparency notice under subsection 14E(1) if satisfied that the notice should be updated or corrected. The Secretary must revoke a transparency notice under subsection 14E(2) if the Secretary ceases to be satisfied that the person is a foreign government related entity or a foreign government related individual.

321. Paragraph 14J(1)(b) refers to including a transparency notice, or any variation or revocation of a transparency notice on the register. Subsection 42(1) provides that the Secretary must keep a register of information in relation to the scheme. Paragraphs 42(1)(aa), (ab) and (ac) require the Secretary to include on the register any provisional transparency notices issued under section 14B and any revocation or variation of a transparency notice under section 14E and, for any provisional transparency notices that become final transparency notices under subsection 14C(4), a statement to that effect.

322. Paragraph 14J(1)(c) refers to including a transparency notice, or any variation or revocation of a transparency notice on a website. Subsection 43(2A) requires the Secretary to make available to the public, on a website, a copy of each provisional transparency notice issued under section 14B, and a copy of any variation or revocation under section 14E. Publishing copies of transparency notices, as well as variations and revocations of such notices, is important to fulfil the scheme’s transparency objectives. It will make it clear to potential registrants that a person or entity is a foreign government related entity or foreign government related individual (as the case requires), and therefore a foreign principal for the

purpose of the scheme. The Secretary will also be required, for any provisional transparency notices that become final transparency notices under subsection 14C(4), to publish on the website a statement to that effect.

323. Paragraph 14J(1)(d) refers to publishing or otherwise making available a transparency notice, or any variation or revocation of a transparency notice. This seeks to ensure that any publication or communication which falls outside paragraphs 14J(1)(a) to 14J(1)(c) is similarly protected from an action for defamation.

324. Paragraph 14J(1)(e) refers to supplying or giving access to a draft transparency notice, or a draft variation or revocation of a transparency notice. This seeks to ensure that ordinary communications between officers administering the scheme and an agency which provides information that informs the Secretary's decision to issue a provisional transparency notice or vary or revoke a transparency notice, and with a Minister, are similarly protected against an action for defamation. For example, the administering department may consult a range of Commonwealth departments and agencies in preparing a variation of a transparency notice under subsection 14E(1) and may share the draft variation with those departments and agencies.

325. Subsection 14J(2) provides that protection against an action for defamation will apply even where there has been a failure to comply with a requirement of the Act, or the Administrative Appeals Tribunal Act. The effect of this subsection is to protect the Secretary and other officers from an action of defamation even if one of the actions at paragraphs 14J(1)(a) to 14J(1)(e) does not comply with the legislative requirements of this Act or the requirements of the Administrative Appeals Tribunal Act.

326. Subsection 14J(3) will define who is an 'officer' for the purposes of subsection 14J(1). An officer of a Department or Agency includes:

- a scheme official
- an APS employee in the Department or Agency
- a member of the staff of the Department or Agency
- a member of the Agency or
- a person engaged to perform services for the Department or Agency.

327. ***Scheme official*** is defined in section 51 of the Act to be the Secretary, an APS employee in the Department to whom a function or power is delegated under section 67 of the Act whose functions otherwise include functions in relation to the scheme, or any other person who performs functions in relation to the scheme under an agreement with the Commonwealth.

328. An APS employee will mean a person who is engaged as an employee of the Australian Public Service in a Department or an Agency.

329. Paragraphs 14J(3)(c) and (d) are intended to cover a person who is employed as a staff member of that Department or Agency or who is described as a member of a

Department or Agency in the legislation governing the operations of that Department or Agency.

330. Paragraph 14J(3)(e) is intended to cover other categories of people who may be engaged to undertake functions and duties for the Department or Agency, such as contractors.

Part 2—Registration under the scheme

Division 1—Simplified outline of this Part

Section 15 – Simplified outline of this Part

331. This section provides a simplified outline of Part 2, which sets out when a person is liable to register under the scheme, whether a particular activity is registrable, exemptions for the requirement to register and when registration is taken to have ended.

332. Simplified outlines are included to assist readers to understand the substantive provisions and are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.

Division 2—Requirement to register

Section 16 – Requirement to register

333. Subsection 16(1) provides that a person who:

- becomes liable to register under the scheme in relation to a foreign principal, and
- is not already registered under the scheme in relation to that foreign principal

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

334. The reference to **becoming** liable to register in relation to a foreign principal has deliberately been used in section 16 and is defined in section 10 and subsection 18(1). A person **becomes** liable to register under the scheme if the person undertakes a registrable activity in relation to the foreign principal, or they enter into a registrable arrangement with a foreign principal (even if they do not yet engage in any registrable activities).

335. The use of the term **becoming** differentiates the requirement in section 16 from circumstances where a person continues to be liable to register in relation to the same foreign principal, and who would then need to renew their registration annually as per the requirements in section 39 of the Act. This is intended to operate so that a person does not ‘become liable’ every year for the same foreign principal. Rather, a person becomes liable at a particular point in time, and then continues to be liable until their registration ends.

336. However, there are circumstances where a person could **become** liable to register in relation to the same foreign principal, but at different points in time. For example, a person might become liable in relation to a foreign principal on 1 July 2020 and register accordingly. That registration may end on 20 September 2020 in accordance with section 32 if the person

gives a notice under section 31 that they are no longer liable to register under the scheme. On 1 January 2021, the same person may become liable again in relation to the foreign principal, and so would need to complete a new application for registration.

337. Consistent with subsection 16(1), a person must apply for registration within 14 days of becoming liable in relation to that foreign principal. Section 36 of the Acts Interpretation Act will apply in relation to how this 14 day period is calculated.

338. The effect of subsection 16(1) is that separate applications for registration are required in relation to each separate foreign principal on behalf of whom a person acts. For example, if a person undertakes registrable activities on behalf of foreign principal X on 1 January 2020, that person must apply for registration in relation to foreign principal X by 15 January 2020. However, if that same person also undertakes registrable activities on behalf of foreign principal Y on 10 January 2020, they must complete a separate application for registration in relation to foreign principal Y by 25 January 2020.

339. The Note to subsection 16(1) states that it is an offence not to register if a person is liable to register. The relevant offences are set out in Part 5 of the Act.

340. Subsection 16(2) provides that the application for registration must be:

- in writing
- in an approved form (if any)
- given in an approved manner (if any), and
- be accompanied by information or documents required by the Secretary.

341. *Approved form* and *approved manner* are defined in section 10 and section 66 of the Act. These definitions enable the Secretary to approve a form or a manner in writing for the purposes of the Act.

Section 17 – When a person is registered under the scheme

342. Subsection 17(1) provides that a person is registered under the scheme in relation to a foreign principal from the day an application for registration is given to the Secretary in accordance with the requirements of section 17, until registration ends under section 32.

343. The application for registration under section 17 must comply with the requirements set out at subsection 16(2) relating to the form and manner of the application. If a person fails to submit the application for registration in a form or manner approved by the Secretary under section 17, that person will not be considered to be registered under the scheme.

344. When a person is registered under the scheme is distinct from when a person *becomes* liable to register under the scheme. Sections 18 and 19 separately deal with when a person becomes liable to register and ceases to be liable to register.

345. An example of the differences between when a person is liable, versus when a person is registered, is as follows. A person undertakes registrable activities on behalf of a foreign

principal on 1 March. That person becomes liable to register on 1 March, and is required to apply to the Secretary for registration under section 17 by 15 March. If that person does not apply for registration until 20 April, the person will be **registered** under the scheme from 20 April, but **became** liable to register on 1 March. This is relevant for the enforcement options available under Part 5 of the Act.

346. Subsection 17(2) ensures that a late application is still sufficient for a person to be considered to be **registered** for the purpose of the scheme. This subsection has been included because section 16 provides that a person must make an application for registration no later than 14 days after becoming liable. If the 14-day period has passed, subsection 17(2) ensures that a person is not prevented from applying for registration despite the fact that they have not technically complied with the timing requirements set out at section 16.

Section 18 Persons who are liable to register

347. Section 18 establishes the circumstances in which a person is liable to register.

348. Subsection 18(1) provides that a person **becomes** liable to register under the scheme in relation to a foreign principal if the person:

- undertakes an activity on behalf of a foreign principal that is a registrable activity in relation to the foreign principal, or
- enters into a registrable arrangement with a foreign principal.

349. A **foreign principal** is defined in section 10 to mean a foreign government, a foreign government related entity, a foreign political organisation and a foreign government related individual .

350. There are two ways in which a person can be liable to register, either by undertaking a registrable activity or entering a registrable arrangement.

351. An activity is a registrable activity in relation to a particular foreign principal if it falls within Division 3 of Part 2. The application of Division 3 of Part 2 is described in detail below.

352. **Registrable arrangement** is defined at section 10 to mean an arrangement between a person and a foreign principal for the person to undertake an activity that, if undertaken by the person, would be registrable in relation to the foreign principal. A registrable arrangement does not require the person to have actually engaged in any activities on behalf of a foreign principal—the existence of the arrangement suffices for the purposes of the definition at section 10.

353. A person **becomes** liable to register under paragraph 18(1)(a) on the particular date that the person engages in a registrable activity. The person would become liable to register under the scheme as soon as the activity is engaged in, even if there was no registrable arrangement with the foreign principal prior to engaging in that activity.

354. A person **becomes** liable to register under paragraph 18(1)(b) on the particular date that the person enters into the registrable arrangement. The person would become liable to

register under the scheme from this date even if, for example, the person does not actually engage in the registrable activities for a further two months.

355. Subsection 18(2) provides that a person who has become liable to register in relation to a foreign principal in accordance with subsection 18(1) will remain liable to register under the scheme in relation to that particular foreign principal until they cease to be liable to register under section 19.

356. As described at section 16, when a person is liable to register under the scheme is not the same as when a person is registered under the scheme. A person's liability to register under the scheme will continue in circumstances where they are no longer registered under the scheme, but continue to engage in registrable activities on behalf of a foreign principal within the meaning of the Act.

357. Paragraph 18(3)(a) clarifies that for the purposes of paragraph 18(1)(a), a person becomes liable to register even if the person only undertakes an activity once. For example, a person undertakes general political lobbying on behalf of a foreign government related entity on 20 February. The lobbying activity is in relation to a major Australian Government policy due to be announced on 21 February and will be a one-off activity. That person becomes liable to register on 20 February.

358. Paragraph 18(3)(b) clarifies that for the purposes of paragraph 18(1)(b), a person becomes liable to register even if they do not undertake any activities under a registrable arrangement. For example, a person in Australia may enter into a contract with the government of Country B to engage in general political lobbying once a specified circumstance occurs. The person becomes liable to register from the date of the contract, irrespective of whether the specified circumstance occurs or the general political lobbying activities are actually subsequently undertaken.

Section 19 – Ceasing to be liable to register

359. Section 19 deals with the circumstances in which a person *ceases* to be liable to register under the scheme.

360. Subsection 19(1) provides that a person *ceases* to be liable to register under the scheme in relation to a foreign principal if:

- the person has given notice to the Secretary under section 31, specifying the day as the day the person's registration in relation to the foreign principal is to cease in accordance with subsection 31(3); and
- on the day, no registrable arrangement exists between the person and the foreign principal.

361. Section 31 enables a person who is already registered under the scheme in relation to a foreign principal to notify the Secretary in writing (in a prescribed form and manner) that the person has ceased to undertake registrable activities on behalf of a foreign principal, and no registrable arrangement is in existence. The effect of giving this notice, if done in compliance with the requirements set out at section 31, is that the person will no longer be registered under the scheme in relation to that foreign principal.

362. Paragraph 19(1)(b) has been included to clarify that a person will continue to be liable in relation to a foreign principal if a registrable arrangement continues to be in existence on the day specified in the section 31 notice. This is intended to address a situation where a person avoids liability to register by giving the Secretary notice of end of liability to register, where they actually continue to be liable because a registrable arrangement is still in place.

363. For example, Person A is registered under the scheme in relation to a foreign principal because they engage in disbursement activity on behalf of the government of Country Z. Person A gives notice under section 31 that registration will cease on 15 October. If, on 15 October, Person A continues to engage in disbursement activity, or other registrable activities on behalf of Country Z, they will not cease to be liable to register. In fact, if Person A gives notice and ends registration under section 31 but continues to engage in registrable activities, Person A would be committing an offence under section 57A of the Act. In order for Person A to cease to be liable in accordance with the requirements of section 19, Person A would need to give another notice to the Secretary under section 31 at the time as Person A ceases to engage in registrable activities.

364. Subsection 19(2) provides that if a person is liable to register in relation to a foreign principal only because they were a former Cabinet Minister or a recent designated position holder, they will cease to be liable to register in relation to the foreign principal as soon as they cease to be that kind of person. An example is as follows:

Person A was an High Commissioner employed by Australian Government on 20 November 2020. On 21 November 2020 Person A resigned from this post and is no longer a recent designated position holder. On 25 November 2020, Person A is employed by an agency of the government of Country Y. On 25 November 2020, Person A would be liable to register under the scheme in accordance with section 23 of the Act.

If Person A continues to be employed by the agency on 25 November 2035, Person A would no longer be liable to register in relation to this foreign principal under section 232. This is because fifteen years has passed since the time when Person A was a High Commissioner, and this means they are no longer a ‘recent designated position holder’ as defined at section 10.

Division 3—Registrable activities

365. Division 3 of Part 2 outlines the different kinds of registrable activities which form the basis upon which a person will be liable to register under the scheme. In accordance with section 18, a person will be liable to register if they undertake an activity on behalf of a foreign principal that is a registrable activity in relation to that foreign principal, or if they enter into a registrable arrangement with a foreign principal (that is, an arrangement to do an activity which is a registrable activity in relation to that foreign principal).

366. Whether an activity is a registrable activity is determined by the identity of the foreign principal, the nature of the activities, the identity of the person undertaking the activities, and the purpose for which the activities are undertaken.

367. The different registrable activities are as follows:

- parliamentary lobbying on behalf of a foreign government (section 20)
- activities in Australia for the purpose of political or governmental influence, namely other forms of parliamentary lobbying, general political lobbying, communications activity, and disbursement activity (section 21)
- registrable activities of former Cabinet Ministers (section 22), and
- registrable activities of recent designated position holders (section 23).

368. In all circumstances, an activity will only be a registrable activity if a person undertakes the activity, or has an arrangement to undertake the activity, on behalf of a foreign principal. If the foreign principal engages in the activity himself, herself or itself, registration will not be required under the scheme. The rationale is that such activities are transparent on their face, as the recipient of the information is aware that the foreign principal is the one advancing the position, interests or information.

Section 20 – Registrable activities: parliamentary lobbying on behalf of foreign government

369. Section 20 provides that parliamentary lobbying on behalf of a foreign government is a registrable activity, unless the person is exempt under Division 4 of Part 2 of the Act in relation to the activity.

370. **Parliamentary lobbying** is defined at section 10 to mean lobbying a member of Parliament or a person employed under sections 13 or 20 of the MOPS Act. **Lobby** is also defined at section 10 to include communicating in any way with other persons for the purpose of influencing a process, decision or outcome, or otherwise representing the interests of a person in any process.

371. Parliamentary lobbying need not be done for any particular purpose in order to be a registrable activity under section 20. However, the activity must be done within Australia and is limited to activities undertaken on behalf of a foreign government as the foreign principal.

372. The policy rationale for this category of registrable activity is that lobbying a member of Parliament or their staffer is an activity which is inherently political in nature. Any influence over such persons may have significant implications for Australian public policy, and it is in the public interest to know when this is occurring on behalf of foreign government.

373. Parliamentary lobbying undertaken on behalf of a foreign government, where the link with the foreign government is hidden or obscured, has the potential to unduly influence Australian political or governmental systems and processes, undermining our political sovereignty. In such circumstances, members of Parliament or persons employed under the MOPS Act who are being lobbied may be hampered in their ability to assess the interests which are being represented by the person, and may lead to decisions that unwittingly benefit foreign equities at the expense of Australia interests. It is both expected and appropriate for a foreign government to pursue their interests transparently, through diplomatic or direct government-to-government channels. When this does not occur, the person acting on behalf of the foreign government will be required to register under section 20.

374. If activities fall within section 20 and are registrable, then a person is required to register under the scheme under Division 2 of Part 2 of the Act.

375. Examples of scenarios to which section 20 would apply are as follows:

Example 1: An Australian lobbying firm enters into a contract with the government of Country X. The firm is contracted to lobby the Minister for Communications to discuss advertising restrictions in Australia. This would be a registrable activity under section 20 as the activity of the lobbying firm falls within the definition of parliamentary lobbying – that is, the firm is communicating with a member of Parliament on behalf of a foreign government. The contract between the lobbying firm and Country X constitutes an arrangement for the purposes of paragraph 11(1)(a) and the lobbying firm’s activities are therefore undertaken on behalf of the foreign government.

Example 2: The government of Country Y asks an Australian citizen to write to the Minister for Agriculture protesting the classification of pesticides produced in Country Y by the Australian Pesticides and Veterinary Medicines Authority. This would be a registrable activity under section 20 as the activity engaged in by the person falls within the definition of parliamentary lobbying – that is, the person is communicating with a member of Parliament on behalf of a foreign government. Country Y asking the Australian citizen to write the letter is direction from the foreign government under paragraph 11(1)(d) and the Australian citizen’s activities are therefore undertaken on behalf of the foreign government.

376. Division 4 of Part 2 establishes a number of exemptions for activities undertaken on behalf of foreign governments in certain circumstances. A person will be exempt from the application of section 20 if:

- the activity is, or relates primarily to, the provision of humanitarian aid or humanitarian assistance (section 24)
- the activity is, or relates primarily to, or is incidental to, the provision of legal advice or legal representation (section 25)
- the person is a member of the Parliament at the Commonwealth, State or Territory level, or holds any office or appointment under the law of the Commonwealth or under the law of a State or Territory (section 25A)
- the person is entitled to diplomatic, consular or other privileges or immunities in relation to the activity (section 26)
- the activity is a religious activity undertaken in good faith (section 27)
- the individual undertakes the activity in his or her capacity as an individual employed by a foreign government or a foreign government related entity or is operating under the name of the foreign government related entity (section 29)
- the activity is undertaken by a professional industry body representing the collective interests of its members both foreign and domestic (section 29A)

- the activity is undertaken in pursuit of a registered charity's charitable purpose within the meaning of Part 3 of the *Charities Act 2013* (section 29C)
- the activity is, or relates primarily to, or is incidental to, the person's artistic purpose (section 29D)
- the person who undertakes the activity is an association of employees, or an enterprise association, that is registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* (section 29E)
- the person undertakes the activity in the ordinary course of their business as a tax agent, customs broker or a liquidator or receiver (section 29F), and
- the activity is prescribed by rules made for the purposes of the Act (section 30).

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

377. Subsection 21(1) provides that an activity is a registrable activity in relation to a foreign principal if:

- the activity is undertaken in Australia
- the activity is for the purpose of political or governmental influence
- the foreign principal is the kind of foreign principal specified in the column in the table, and
- the person is not exempt under Division 4 of Part 2 in relation to the activity.

378. Activities that are regulated by section 21 are parliamentary lobbying (other than for a foreign government, which is covered by section 20), general political lobbying, communications activity and disbursement activity undertaken in Australia for the purpose of political or government influence.

Item 1 – Parliamentary lobbying

379. Item 1 of the table deals with parliamentary lobbying undertaken in Australia on behalf of a foreign principal other than a foreign government (which is dealt with at section 20).

380. Undertaking parliamentary lobbying on behalf of a foreign government related entity, a foreign political organisation or a foreign government related individual is a registrable activity in relation to that foreign principal under item 1 if the parliamentary lobbying:

- is undertaken within Australia, and
- is for the purpose of political or governmental influence.

381. **Parliamentary lobbying** is defined at section 10 to mean lobbying a member of the Parliament or a person employed under sections 13 or 20 of the MOPS Act. **Lobby** is also defined at section 10 to include communicating in any way with other persons for the purpose of influencing a process, decision or outcome, or otherwise representing the interests of a person in any process.

382. For parliamentary lobbying to be registrable under item 1 of the table at subsection 21(1), the foreign principal must be:

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

383. Item 1 of the table is limited to these types of foreign principals so that there is no overlap between sections 20 and 21 in relation to parliamentary lobbying. If a person undertakes parliamentary lobbying in Australia for a foreign government, that activity will be registrable under section 20 regardless of the purpose of the lobbying. Section 21 is different because the parliamentary lobbying will only be registrable if it is done for the purpose of political or governmental influence.

384. Section 12 provides that an activity is undertaken for the purpose of **political or governmental influence** if the sole or primary purpose, or a substantial purpose of the activity being undertaken is to influence one or more of the following:

- a process in relation to a federal election or a designated vote
- a process in relation to a federal government decision
- proceedings of a House of the Parliament
- a process in relation to a registered political party
- a process in relation to a member of Parliament who is not a member of a registered political party, or
- a process in relation to a candidate in a federal election who is not endorsed by a registered political party.

385. This additional purpose applies to parliamentary lobbying on behalf of the foreign principals covered by item 1 of the table to reflect that it is not always inherently political for such foreign principals to, for example, make representations to a member of Parliament. This item appropriately ensures transparency for parliamentary lobbying where it is for the purpose of political or governmental influence.

386. An example of parliamentary lobbying under item 1 of the table is as follows:

A foreign government related entity enters into a contract with an Australian lobbying firm. Under the contract, the Australian lobbying firm is engaged to

represent the interests of the foreign government related entity in relation to Australia's re-negotiation of a free trade agreement. The foreign related entity wants proposed exclusion clauses to not be included in the free trade agreement.

The Australian lobbying firm meets with a senior adviser to the Minister for Trade in accordance with the instructions of the foreign government related entity.

This would be a registrable activity under item 1 of the table in subsection 21(1) as the activity engaged in by the lobbying firm falls within the definition of parliamentary lobbying – that is, the firm is communicating with a person employed under the MOPS Act for the purpose of influencing a process, decision or outcome, and that activity is undertaken on behalf of a foreign government related entity. The contract between the lobbying firm and the foreign government related entity constitutes an arrangement for the purposes of paragraph 11(1)(a) the lobbying firm's activities are therefore undertaken on behalf of the foreign government related entity.

387. If activities fall within item 1 of the table in subsection 21(1) and are registrable, then a person is required to register under the scheme under Division 2 of Part 2 of the Act.

Item 2– General political lobbying

388. Item 2 of the table deals with general political lobbying undertaken in Australia on behalf of any kind of foreign principal.

389. Undertaking general political lobbying on behalf of a foreign government, foreign government related entity, foreign political organisation or foreign government related individual is a registrable activity in relation to that foreign principal under item 2 if the general political lobbying:

- is undertaken within Australia, and
- is for the purpose of political or governmental influence.

390. **General political lobbying** is defined at section 10 to mean lobbying any one or more of the following:

- a Commonwealth public official
- a Department, agency or authority of the Commonwealth
- a registered political party, or
- a candidate in a federal election

that is not parliamentary lobbying.

391. **Lobby** is also defined at section 10 to include communicating in any way with other persons for the purpose of influencing a process, decision or outcome, or otherwise representing the interests of a person in any process.

392. **General political lobbying** will only be a registrable activity under item 2 of the table if the activity is undertaken for the purpose of **political or governmental influence**.

Section 12 provides that an activity is undertaken for such a purpose if the sole or primary purpose, or a substantial purpose, of the activity is to influence one or more of the following:

- a process in relation to a federal election or a designated vote
- a process in relation to a federal government decision
- proceedings of a House of the Parliament
- a process in relation to a registered political party
- a process in relation to a member of Parliament who is not a member of a registered political party, or
- a process in relation to a candidate in a federal election who is not endorsed by a registered political party.

393. The policy rationale for including item 2 of the table as a registrable activity is that Commonwealth public officials, Commonwealth departments, agencies or authorities, registered political parties, independent members of Parliament and candidates in federal elections have significant influence in political and governmental processes and decision making. Influence exerted by foreign principals through persons acting on their behalf over such persons has the potential to distort decisions on public policy which could, ultimately, undermine Australia's political sovereignty.

394. An example of general political lobbying under item 2 of the table is as follows:

A foreign government related individual requests an Australian citizen to make a written submission to a review of Australia's intercountry adoption programs being undertaken by the Attorney-General's Department. The foreign government related individual tells the Australian citizen Australia should open an intercountry adoption program with Country Z, with which Australia does not currently have such a program.

This would be a registrable activity under item 2 of the table in subsection 21(1) as the activity engaged in by the Australian citizen falls within the definition of general political lobbying – that is, the Australian citizen is communicating with a Commonwealth Department for the purpose of influencing a process, decision or outcome, and that activity is undertaken on behalf of a foreign government related individual. The encouragement of the foreign government related individual to the Australian citizen would fall within paragraph 11(1)(c) and the Australian citizen's activities are therefore undertaken on behalf of the foreign government related individual.

395. The registrable activities covered by item 2 of the table have been carefully calibrated to ensure that activities that do not affect Australia's political or governmental system are not covered.

396. If activities fall within item 2 of the table in section 21 and are registrable, then a person is required to register under the scheme under Division 2 of Part 2 of the Act.

Item 3 – Communications activity

397. Item 3 of the table deals with communications activity undertaken in Australia on behalf of any kind of foreign principal as defined in section 10.

398. Undertaking communications activity on behalf of a foreign government, foreign government related entity, foreign political organisation or foreign government related individual is a registrable activity in relation to that foreign principal under item 3 if the communications activity:

- is undertaken within Australia, and
- is for the purpose of political or governmental influence.

399. **Communications activity** is defined at section 13, which provides that a person undertakes communications activity if the person communicates or distributes information or material to the public or a section of the public.

400. Communications activity will only be a registrable activity under item 3 of the table if it is undertaken for the purpose of **political or governmental influence**. Section 12 provides that an activity is undertaken for such a purpose if the sole or primary purpose, or a substantial purpose, of the activity is to influence one or more of the following:

- a process in relation to a federal election or a designated vote
- a process in relation to a federal government decision
- proceedings of a House of the Parliament
- a process in relation to a registered political party
- a process in relation to a member of Parliament who is not a member of a registered political party, or
- a process in relation to a candidate in a federal election who is not endorsed by a registered political party.

401. The policy rationale for including item 3 of the table as a registrable activity is that communications activities can be very powerful in affecting the views and opinions of persons involved in Australia's political and governmental processes. Communications activities can also target the public or a section of the public which, consistent with subsection 12(2), can be a form of political or governmental influence. It is essential that there is transparency where such communications activities are undertaken on behalf of a foreign principal. This allows the person, the public or a section of the public to assess the interests which are being represented by the person undertaking the communications activity.

402. An example of communications activity under item 3 of the table is as follows:

A prominent Australian is requested by the government of Country Y to write an article protesting the impending passage of federal laws tightening restrictions on foreign investment. The article, which urges members of Parliament to vote against the laws, is to be published in an Australian newspaper.

This would be a registrable activity under item 3 of the table in subsection 21(1) as the activity engaged in by the prominent Australian falls within the definition of communications activity – that is, the Australian is communicating or distributing information or material for the purpose of influencing a process, decision or outcome, and that activity is undertaken on behalf of a foreign government. The request from the foreign government to the Australian falls within paragraph 11(1)(c) and the Australian's activities are therefore undertaken on behalf of the foreign government.

403. If activities fall within item 3 of the table in subsection 21(1) and are registrable, then a person is required to register under the scheme under Division 2 of Part 2 of the Act.

Item 4– Disbursement activity

404. Item 4 of the table deals with disbursement activity undertaken in Australia on behalf of a foreign government, foreign government related entity, foreign political organisation or foreign government related individual as defined in section 10.

405. Undertaking disbursement activity on behalf of a foreign government, foreign government related entity, foreign political organisation or a foreign government directed individual is a registrable activity in relation to that foreign principal under item 4 of the table if the disbursement activity:

- is undertaken within Australia, and
- is done for the purpose of political or governmental influence.

406. The definition of **disbursement activity** at section 10 provides that a person undertakes disbursement activity if the person disburses money or things of value, and neither the person disbursing, 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. The registration requirement for item 4 of the table is intended to complement, and not overlap with, the electoral funding and financial disclosure requirements under the Commonwealth Electoral Act.

407. Disbursement activity will only be a registrable activity under item 4 of the table if it is undertaken for the purpose of **political or governmental influence**. Section 12 provides that an activity is undertaken for such a purpose if the sole or primary purpose, or a substantial purpose, of the activity is to influence one or more of the following:

- a process in relation to a federal election or a designated vote
- a process in relation to a federal government decision
- proceedings of a House of the Parliament

- a process in relation to a registered political party
- processes in relation to a member of Parliament who is not a member of a registered political party, or
- a process in relation to a candidate in a federal election who is not endorsed by a registered political party.

408. \An example of disbursement activity under item 4 of the table is as follows:

A foreign political organisation has an arrangement with an Australian citizen. There is likely to be a federal election in Australia in the next 12 months (although the voting period has not yet commenced), and the foreign political organisation has expressed a view that it would like a particular party to be elected.

The Australian citizen makes a number of donations on behalf of the foreign political organisation - one of the donations is to a student union at an Australian university, to run on-campus campaigning to influence student votes consistent with the preference of the foreign political organisation. The student union does not fall within the reporting requirements in Part XX of the Commonwealth Electoral Act.

This would be a registrable activity under item 4 of the table in subsection 21(1) as the activity engaged in by the Australian citizen falls within the definition of disbursement activity – that is, the Australian citizens is disbursing money for the purpose of influencing a section of the public in relation to a federal election. As neither the Australian citizen disbursing the money nor the student union receiving the disbursement is required to disclose it under the Commonwealth Electoral Act, it would be a registrable activity under item 4. The arrangement between the Australian citizen and the foreign political organisation constitutes an arrangement for the purposes of paragraph 11(1)(a) and the Australian citizen's activities are therefore undertaken on behalf of the foreign political organisation.

409. The registrable activities covered by item 4 of the table have been carefully calibrated to ensure that activities that do not affect Australia's political or governmental system are not covered. There are many circumstances in which a foreign principal could engage a person to undertake disbursement activity in Australia beyond the purpose of political or governmental influence. Such circumstances would, for example, include a foreign government making donations to local businesses to promote outreach and cross-cultural awareness programs amongst employees.

410. If activities fall within item 4 of the table in section 21 and are registrable, then a person is required to register under the scheme under Division 2 of Part 2 of the Act.

Subsection 21(2)

411. Subsection 21(2) provides that a single activity undertaken by a person may be covered by more than one item of the table in subsection 21(1). In these circumstances, the scheme applies in relation to the activity as covered by each item. An example of this is as follows:

An Australian lobbying firm is engaged by a foreign government related entity to make representations to the Australian Government Department of Treasury to ease foreign investment restrictions. If the lobbying firm meets with Treasury Department officials to communicate the views of the foreign government related entity on foreign investment, this would be a registrable activity under item 2 of the table at subsection 21(1), as the activity engaged in by the Australian lobbying firm falls within the definition of general political lobbying.

If in that same meeting the lobbying firm provides hard-copy materials that reiterate the views of the foreign government related entity that were expressed verbally at the meeting, this would be a registrable activity under item 3 of the table at subsection 21(1), as the activity engaged in by the Australian lobbying firm falls within the definition of communications activity in section 13.

Should the Australian lobbying firm apply to register under the scheme, it would need to provide information about the registrable activities undertaken in relation to both items 2 and 3.

Section 22 – Registrable activities: former Cabinet Ministers

412. Section 22 provides that an activity is a registrable activity in relation to a foreign principal if:

- the person who undertakes the activity is a former Cabinet Minister
- the activity is not otherwise a registrable activity under another provision in Division 3 of Part 2, and
- the person is not exempt under Division 4 of Part 2 in relation to the activity.

413. **Former Cabinet Minister** is defined at section 10 to mean, at a particular time, a person who was a member of the Cabinet at any time before the particular time, and who is not at the particular time, a designated position holder. A **designated position holder** is defined in section 10 to mean a Minister, a member of the Parliament, a person who is a member of staff of a Minister and employed at the level of Senior Advisor and above under sections 13 or 20 of the MOPS Act, an Agency Head, a deputy agency head, the equivalent of an Agency Head or deputy agency head in an office established by or under a law of the Commonwealth, or an Ambassador or High Commissioner.

414. Unlike sections 20 and 21, section 22 does not specify the kinds of activities that a former Cabinet Minister needs to undertake in order for the person to be required to register. The rationale for including former Cabinet Ministers is that, by virtue of holding such a senior position within the Australian Government, these persons bring significant influence to bear in any activities undertaken on behalf of a foreign principal. Given former Cabinet Ministers have occupied a significant position of influence, are likely to have a range of influential contacts with decision making authority in the political process and have had access to classified and sensitive information concerning current and recent Australian Government priorities, it is in the public interest to know when such persons have an arrangement with a foreign principal.

415. Section 22 does not prohibit former Cabinet Ministers from engaging in activities on behalf of a foreign principal. They may be employed by, or act in any capacity for, a foreign principal. It is simply necessary for them to register to ensure there is transparency in relation to their connection to the foreign principal.

416. Examples of the application of section 22 are as follows:

Example 1: A person was a member of the Cabinet in the Australian Parliament on 1 June 2019. The person retired from the Australian Parliament on 2 June 2019 and is no longer a Minister, member of the Parliament or holder of a senior Commonwealth position.

The person is employed as an advisor to Country W on economic development on 20 June 2020. This would be a registrable activity under section 22, as Country W is a foreign government within the definition of foreign principal and the person has entered in an arrangement with the foreign principal after ceasing to be a Cabinet Minister.

Example 2: A person was a member of the Cabinet in the Australian Parliament on 15 April 2025. A federal election was held on 20 April 2025, and the person was not re-elected. The person is no longer a Minister, member of the Parliament or holder of a senior Commonwealth position.

On 10 December 2026, the person is contracted by a foreign government related entity as an advisor. This would be a registrable activity under section 22, as a foreign government related entity is a foreign principal and the person has entered into an arrangement with the foreign principal after ceasing to be a Cabinet Minister.

417. Section 22 is intended to be mutually exclusively to the registration obligations at sections 20, 21 and 23. As such, if the activity that the former Cabinet Minister undertakes is a registrable activity under one of those sections, section 22 will not apply. An example of this is as follows:

Person A is a former Cabinet Minister in the Australian Parliament who retired on 10 October 2021. Person A enters into a contract on 1 January 2022 with a foreign government related entity, to lobby members of Parliament in relation to telecommunications contracts.

Person A's activities for the foreign government related entity fall within item 1 of the table in section 21, being parliamentary lobbying activities undertaken in Australia on behalf of a foreign public enterprise.

As such, the person would be required to register under section 21 in relation to these activities, and not by virtue of the fact that the person is a former Cabinet Minister for the purposes of section 22.

418. If activities fall within section 22 and are registrable, then a person is required to register under the scheme under Division 2 of Part 2 of the Act.

Section 23 – Registrable activities: recent designated position holders

419. Section 23 provides that an activity is a registrable activity in relation to a foreign principal if:

- the person is a recent designated position holder
- in undertaking the activity, the person contributes experience, knowledge, skills or contacts gained in the person's former capacity as a designated position holder
- the activity is not registrable in relation to the foreign principal under another provision of Division 3 of Part 2, and
- the person is not exempt under Division 4 of Part 2 in relation to the activity.

420. A ***designated position holder*** is defined in section 10 to mean any of the following:

- a Minister
- a member of the Parliament
- 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
- an Agency Head (within the meaning of the *Public Service Act 1999*)
- a deputy agency head (however described)
- the holder of an office established by or under a law of the Commonwealth and equivalent to that of an 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 of Australia.

421. A ***recent designated position holder*** is defined in section 10 to mean, at a particular time, a person:

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

422. Section 23 does not specify the kinds of activities that a recent designated position holder needs to undertake in order to be captured by this provision. Any activity done by a recent designated position holder on behalf of a foreign principal is registrable if, in undertaking the activity, the person contributes experience, knowledge, skills or contacts gained in the person's former capacity as a designated position holder. The terms experience,

knowledge, skills and contacts are not defined in the Bill and are intended to be construed broadly.

423. Unlike the registration requirements in sections 20 and 21, section 23 does not require the activities to be undertaken in Australia. Recent designated position holders will be required to register if they meet the requirements set out in the section, regardless of where the activities are undertaken in the world.

424. The rationale for including recent designated position holders in section 23 is that, by virtue of holding a position in the Australian Parliament or a senior position in the Australian Government bureaucracy, these persons bring significant influence to bear in any activities undertaken on behalf of a foreign principal. It is appropriate and in the public interest to require transparency of such individuals where the person is contributing skills, knowledge, contacts and experience gained through their previous public role.

425. An example of the application of section 23 is as follows:

Person B resigns from a position as Secretary of the Commonwealth department with responsibility for infrastructure. Within six months of resigning, Person B accepts a position on the board of a global construction firm that regularly bids for contracts with the Australian Government. The construction firm satisfies the definition of foreign government related entity under this Act.

Person B's role does not involve any activities otherwise registrable under sections 20 and 21 of the scheme. However, this would be a registrable activity under section 23, as a foreign government related entity is a foreign principal and Person B has entered into an arrangement with the foreign principal within 15 years of holding a designated position.

426. Section 23 is intended to be mutually exclusive to sections 20, 21 and 22. As such, if the activity that the recent designated position holder undertakes is a registrable activity under one of those sections, section 23 will not apply.

Division 4—Exemptions

427. Division 4 sets out a range of exemptions. If any of these exemptions applies, a person will not be required to register under the scheme, even if their activities fall within one of the categories set out at Division 3 of Part 2.

Section 24 – Exemption: humanitarian aid or assistance

428. Section 24 specifies that a person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if the activity is, or primarily relates to, the provision of humanitarian aid or humanitarian assistance.

429. The exemption in section 24 recognises that the provision of humanitarian aid or assistance is a shared and collective endeavour of the international community and that activities advanced solely for this purpose do not impact upon Australia's national interests.

430. The term *person* is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body, or
- an entity or group 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.

431. The term ‘activity’ refers to registrable activities as described in Division 3 of Part 2 of the Act.

432. The term ‘primarily’ is not defined and will be given its ordinary meaning. This term is intended to convey that the activities covered by the exemption at section 24 must be able to be chiefly or principally considered as being done for the purpose of humanitarian aid or humanitarian assistance.

433. The term ‘provision of’ is not defined and is intended to take its ordinary meaning. The term is intended to be construed broadly, to capture both direct forms of humanitarian aid and assistance, including through donating funds and delivering in country humanitarian assistance such as medical services, as well as activities beyond the act of directly giving or providing humanitarian aid or assistance, such as activities relating to processes and procedures which support the provision of humanitarian aid or assistance.

434. The terms ‘humanitarian aid’ and ‘humanitarian assistance’ are not defined and will assume their ordinary meanings. The terms are intended to include material and logistical assistance provided during man-made and natural disasters and crises, and during times of conflict or civil unrest, as well as preventative humanitarian aid and assistance and long-term development assistance. The terms are intended to be construed broadly, to apply to all aspects of humanitarian aid and assistance where the purpose is to save lives, alleviate suffering and maintain human dignity. This could include, for example, the provision of funds, food, water, sanitation, shelter, medical or logistical support both during humanitarian crises and as part of long-term development assistance. The term ‘in relation to’ is intended to include activities related to humanitarian aid, such as attending meetings, making representations, and developing and producing communication materials where those activities are undertaken solely in relation to the provision of humanitarian aid and humanitarian assistance.

435. An examples of a scenario in which the section 24 exemption for ‘humanitarian aid or assistance’ may apply is as follows:

The government of Country X funds an Australian incorporated non-government organisation (NGO) to develop and produce communications material encouraging the Australian Government to commit more money to a particular overseas humanitarian crisis. Without the exemption in section 24, the NGO would be required to register under the scheme, as it would be undertaking a registrable activity under section 21 on behalf of a foreign principal for the purpose of political or governmental influence. However, because the materials are developed and produced primarily in relation to humanitarian aid or assistance, the NGO would fall within the exemption at section 24 and would not be required to register under the scheme.

Section 25 – Exemption: legal advice or representation

436. Section 25 specifies that 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 legal advice, legal representation in judicial, criminal or civil inquiries, investigations or proceedings, or legal representation in relation to a government administrative process involving the foreign principal.

437. This exemption is intended to recognise the proper role of the legal profession in providing legal advice to foreign principals.

438. The term ‘primarily’ is not defined and will be given its ordinary meaning. This term is intended to convey that the activities covered by the exemption at section 25 must be able to be chiefly or principally considered as being done to provide legal advice or legal representation.

439. The term ‘incidental’ is intended to attract a narrow meaning. The Macquarie Dictionary defines the term to mean:

- happening or likely to happen in fortuitous or subordinate conjunction with something else
- incurred causally and in addition to the regular or main amount
- something incidental, as a circumstance
- minor expenses, and
- incidental to, liable to happen in connection with; naturally appertaining to.

440. In the context of this exemption, the term ‘incidental’ is intended to only take the final of these dictionary meanings – incidental to, liable to happen in connection with; naturally appertaining to. Some of the other meanings require only a slight connection, which is not sufficient for the exemption to apply.

441. The terms ‘legal advice’ and ‘legal representation’ are not defined and will assume their ordinary meanings.

- Legal advice could include professional advice provided by a legal practitioner whether in oral or written form. The exemption as it relates to legal advice covers the provision of all legal advice, and is not limited to legal advice provided in relation to judicial, criminal or civil inquiries, investigations or proceedings.
- Legal representation could include representation before courts, tribunals or other adjudicating authorities, as well as other forms of representations made as part of a lawyer-client relationship regarding a judicial, criminal or civil law enforcement inquiry, investigation or proceeding.

442. The term ‘judicial, criminal or civil inquiries, investigations or proceedings’ is not defined and is intended to take its ordinary meaning. Examples of judicial, criminal or civil law enforcement inquiries, investigations or proceedings could include:

- inquiries and investigations by Royal Commissions, Parliamentary committees, coroners, and corruption and crime missions
- civil mediations and arbitrations
- proceedings in civil and criminal courts, including tribunals, and
- investigations by intelligence and law enforcement bodies and agencies.

443. The term ‘administrative process’ is not defined and will take its ordinary meaning. This will cover, for example, processes under the *Foreign Acquisitions and Takeovers Act 1975* and *Personal Property Securities Act 2009*. In this context, legal representation could include forms of representations made as part of the lawyer-client relationship regarding a government administrative process.

444. The exemption does not apply to all activities that could be undertaken by a legal practitioner on behalf of a foreign principal. It is only intended to exempt those activities that relate to judicial, criminal or civil law enforcement inquiries, investigations or proceedings. Therefore, if a foreign principal engaged a legal practitioner to undertake activities such as parliamentary lobbying or communications activities for the purpose of political or governmental influence, and those activities were not protected by legal professional privilege, then that legal practitioner would be required to register with the scheme.

445. Examples of scenarios in which the section 25 exemption for ‘legal advice or representation’ may be enlivened are as follows:

Example 1: A legal practitioner is engaged by a foreign political organisation to represent it in a civil defamation proceeding against a candidate in an Australian federal election. The defamation case relates to an election commitment made by the candidate to stop the foreign political organisation from operating in that candidate’s electorate on the basis of unfounded allegations. The legal practitioner is instructed by the foreign political organisation to write to the candidate seeking to convince them to engage in mediation to settle the matter.

In this example, the legal practitioner would, without the exemption in section 25, be required to register under section 21 because the activities are seeking to influence a decision by the candidate about whether to engage in mediation. However, because the legal practitioner is providing legal representation to the foreign political organisation in civil proceedings the section 25 exemption would apply and the legal practitioner would not be required to register under the scheme.

Example 2: A legal practitioner is engaged by a foreign government related individual to represent that individual in a Royal Commission concerning the conduct of the individual. Consistent with instructions provided by the foreign government related individual, the legal practitioner makes representations to members of the Australian Parliament about the role of the Royal Commission and its remit to conduct the inquiry.

In this example, the legal practitioner would, without the exemption in section 25, be required to register under the scheme in accordance with section 21 concerning ‘activities in Australia for the purpose of political or governmental influence.’ However, as the legal practitioner is making representations to members of Parliament in the course of providing legal advice and representing the foreign government related individual in the Royal Commission, the section 25 exemption would apply and the legal practitioner would not be required to register under the scheme.

Section 25A – Exemption: members of Parliament and statutory office holders

446. Section 25A provides an exemption in relation to an activity a person undertakes on behalf of a foreign principal if the person:

- is a member of the Parliament
- 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
- holds any office or appointment under a law of the Commonwealth, or under a law of a State or Territory.

447. The effect of this exemption is that a person who holds any of the appointments or positions listed in paragraphs 25A(a) to (c) will be completely exempt from the operation of the scheme for registrable activities that they undertake while they hold that appointment or position.

448. The amendment addresses concerns raised by the Office of the Australian Small Business and Family Enterprise Ombudsman in Submission 36 to the PJCIS inquiry into the Bill and seeks to ensure that individuals in statutory appointed independent roles will not be required to register under the scheme.

Section 26 – Exemption: diplomatic or consular or similar activities

Exemption relating to diplomatic and consular privileges and immunities

449. Subsection 26(1) provides that a person is exempt in relation to an activity the person undertakes on behalf of a foreign government if the person is entitled to certain privileges and immunities and that activity is undertaken within the scope of the functions that give rise to the person's privileges and immunities.

450. This exemption is intended to apply where consular officials, diplomatic officials or staff members are performing any of the official functions, responsibilities or duties of their role. Engagement by these officials with members of Parliament and the broader Australian Government is a core component of their roles as consular or diplomatic officials. Such activities commonly involve representing the views of the foreign government and seeking to influence the Australian Government's position on various matters.

451. Such engagement is also transparent in that there is no uncertainty about the fact that consular or diplomatic officers represent the interests of a foreign government.

452. Paragraph 26(1)(a) specifies that the exemption for diplomatic and consular or similar activities is limited to a person acting on behalf of a foreign government. **Foreign government** is defined in section 10 to mean:

- the government of a foreign country or part of a foreign country
- an authority of the government of a foreign country
- an authority of the government of part of a foreign country, or
- a foreign local government body or foreign regional government body.

453. The terms 'privileges' and 'immunities' are limited to those that a person is entitled to under the *Consular Privileges and Immunities Act 1972*, the *Diplomatic Privileges and Immunities Act 1967* and the *Overseas Missions (Privileges and Immunities) Act 1995*.

454. The terms 'privileges' and 'immunities' are not defined in this Act. The terms are to be interpreted consistently with the meanings given in the *Vienna Convention on Consular Relations* (1963).

455. The exemption at subsection 26(1) will only apply if the person is undertaking the activity within the scope of the functions that entitle the person to the relevant privileges and immunities. For example, if an embassy official is acting outside the scope of their diplomatic role in undertaking certain activities then the exemption will not apply.

456. An example of a scenario where the section 26 exemption for 'diplomatic and consular activities' may apply is as follows:

Person B is employed by a foreign government and works in that government's embassy in Australia as a Political Counsellor. As part of his or her role, Person B regularly meets with Australian Government officials and with members of

Parliament to advocate on policy issues of relevance to the foreign government. These meetings are undertaken in accordance with their official duties that give rise to privileges and immunities under the Consular Privileges and Immunities Act and the Diplomatic Immunities Act. In this example, because the person engaged in parliamentary lobbying on behalf of a foreign government in accordance with the scope of their functions and their entitlement to privileges and immunities, the section 26 exemption would apply and the person would not be required to register under the scheme.

Exemption for persons acting for the UN within the scope of their functions

457. Subsection 26(2) provides that a person is exempt in relation to an activity the person undertakes on behalf of a foreign government if the person is a UN or associated person within the meaning of Division 71 of the Criminal Code, and undertaking the activity is within the scope of the functions that the person undertakes in the person's capacity as such a person.

458. The term 'activity' refers to registrable activities as described in Division 3 of Part 2 of the Act.

459. Paragraph 26(2)(b) refers to a person who is a UN or associated person within the meaning of Division 71 of the Criminal Code.

460. Section 71.23 of the Criminal Code defines **UN or associated person** to mean a person who is a member of any UN personnel or associated personnel.

461. **UN personnel** is defined in section 71.23 of the Criminal Code to mean:

- persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a UN operation, or
- any other officials or experts on mission of the United Nations, its specialised agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a UN operation is being conducted.

462. **Associated personnel** is defined in section 71.23 of the Criminal Code to mean:

- persons assigned by a government, or an intergovernmental organisation, with the agreement of the competent organ of the United Nations
- persons engaged by the Secretary-General of the United Nations, a specialised agency or the International Atomic Energy Agency, or
- persons deployed by a humanitarian non-governmental organisation or agency under an agreement with the Secretary-General of the United Nations, a specialised agency or the International Atomic Energy Agency;

to carry out activities in support of the fulfilment of the mandate of a UN operation.

463. This exemption is intended to apply where a UN or associated person is performing any of the official functions, responsibilities or duties of their role and could be considered to be acting on behalf of a foreign government which has provided funding to the UN.

Engagement by UN and associated persons with members of the Parliament and the broader Australian Government is a core component of their role. In their official capacity, UN and associated persons neither represent nor advance the interests of particular foreign principals, but are instead concerned with the international community.

464. Little transparency would be gained under the scheme in requiring UN and associated persons to register when they are clearly acting within their official functions, responsibilities or duties.

465. An example of a scenario where the subsection 26(2) exemption relating to persons acting for the UN is as follows:

Section 27 – Exemption: religion

466. Section 27 provides that a person is exempt in relation to a religious activity the person undertakes, in good faith, on behalf of a foreign principal.

467. It is intended for this exemption to be interpreted broadly. For example, it is not intended that the exemption only be available for formal activities connected with the exercise of the religion, but to also extend to advocacy for social policy outcomes that are consistent with the principles or beliefs of the religion. This might include advocacy for policies or funding to reduce homelessness where this is undertaken because of the beliefs that form part of a particular religion.

468. The term ‘acting in good faith’ is not defined and will assume its ordinary meaning, that is, to refer to circumstances where a person acts with honesty and with sincere intention.

469. It is intended that this exemption apply broadly to all religious institutions

Section 29 – Exemption: foreign government employees and commercial or business pursuits

470. Section 29 of the Act provides a number of exemptions for foreign government employees and commercial or business pursuits.

Individual employed by foreign government

471. Subsection 29(1) provides that an individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal if:

- the foreign principal is a foreign government, and
- the individual undertakes the activity
 - in the individual’s capacity as an officer or employee of the foreign principal, and
 - in the name of the foreign principal.

472. This exemption recognises that the activities of an officer or employee of a foreign government, undertaken in their capacity as an officer or employee and in the name of the foreign principal are considered to be sufficiently transparent so that registration is not required. To require such persons to register would impose disproportionate and unjustifiable regulatory requirements under the scheme.

473. Paragraph 29(1)(a) specifies that the exemption for individuals in this section is limited to circumstances where the foreign principal is a ***foreign government***. ***Foreign government*** is defined in section 10 of the Act.

474. The term *individual* is not defined for the purposes of section 29 and is intended to take its ordinary meaning, being a single human being as distinguished from a group. It does not include companies or other types of entities or organisations.

475. Subparagraph 29(1)(b)(i) provides that the exemption applies if the activity is undertaken by the individual in his or her capacity as an officer or employee of the foreign principal.

476. The term *capacity* is not defined and is intended to take its ordinary meaning. The term seeks to clarify that activities undertaken by the officer or employee that are not part of the officer or employee's role, duties or performance expectations, or are not directed by the foreign government, do not fall within the exemption in subsection 29(1).

477. The term *officer* is not defined and is intended to take its ordinary meaning, to include an individual appointed or elected to some position of responsibility and authority in an entity. The term *employee* is not defined and is intended to take its ordinary meaning, to include all employment arrangements whereby a person is considered an employee of a foreign government and identifies themselves as such. The term is not intended to include employees of third parties that are contracted by a foreign government.

478. Subparagraph 29(1)(b)(ii) provides that the exemption applies if the activity is undertaken in the name of the foreign principal. Undertaking an activity 'in the name of' is not defined and is intended to take its ordinary meaning, to include activities undertaken by the authority of, on behalf of or under the name of the foreign principal. This ensures that registration is not required under the scheme when it is clear that the activities undertaken by the individual can be clearly attributed to and linked with the foreign government.

Individual employed by foreign government related entity

479. Subsection 29(2) provides that an individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal if:

- the foreign principal is a foreign government related entity, and
- 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
- it is apparent in the circumstances that the individual is undertaking the activity in that capacity.

480. This exemption recognises that the activities of a director, officer or employee of a foreign government related entity which are commercial or business pursuits and are undertaken in the individual's capacity as a director, officer or employee have little impact on Australian government and political processes. For example, departmental officers should be able to meet with persons representing a foreign government related entity to discuss a transaction involving goods and services, without invoking registration requirements under the scheme. The fact that the person is acting in their capacity as a director, officer or employee of the foreign principal also means that such activities are likely to be sufficiently transparent so that registration is not required. To require such persons to register would also impose disproportionate and unjustifiable regulatory requirements under the scheme.

481. Paragraph 29(2)(a) specifies that the exemption for individuals in this section is limited to circumstances where the foreign principal is a ***foreign government related entity***. ***Foreign government related entity*** is defined in section 10 of the Act.

482. The term *individual* is not defined for the purposes of section 29 and is intended to take its ordinary meaning, being a single human being as distinguished from a group. It does not include companies or other types of entities or organisations.

483. Paragraph 29(2)(b) provides that the exemption applies if 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.

484. The term 'commercial or business pursuit' is not defined and is intended to take its ordinary meaning, to include activities relating to trade, commerce, buying, selling, dealing and marketing.

485. The term *capacity* is not defined and is intended to take its ordinary meaning. The term seeks to clarify that activities undertaken by the officer or employee that are not part of the officer or employee's role, duties or performance expectations, or are not directed by the foreign government related entity, do not fall within the exemption in subsection 29(1).

486. The term *director* is not defined and is intended to take its ordinary meaning, to include one of a body of persons chosen to control or govern the affairs of a company or corporation. The term *officer* is not defined and is intended to take its ordinary meaning, to include an individual appointed or elected to some position of responsibility and authority in an entity. The term *employee* is not defined and is intended to take its ordinary meaning, to include all employment arrangements whereby a person is considered an employee of a foreign government related entity and identifies themselves as such. The term is not intended to include employees of third parties that are contracted by a foreign government related entity.

487. If a director, officer or employee was to undertake activities that fall outside their responsibilities or duties as a director, officer or employee, and they have not been directed by the foreign government related entity to undertake the activity, they would not be able to rely on the exemption for registration in subsection 29(1).

488. Paragraph 29(2)(c) provides that the exemption only applies if it is apparent in the circumstances that the individual is undertaking the activity in their capacity as a director, officer or employee of the foreign principal. This ensures that registration is not required

under the scheme when it is clear that the activities undertaken by the individual can be clearly attributed to and linked with the foreign government related entity.

Person operating under name of foreign government related entity

489. Subsection 29(3) provides that a person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- the foreign principal is a foreign government related entity, and
- the activity is a commercial or business pursuit undertaken by the person under the name of the foreign principal or a substantially similar name.

490. Similar to the proposed exemption in subsection 29(2), this exemption recognises that there are a number of intermediaries in Australia which represent the interests of foreign government related entities in commercial pursuits which have little impact on Australian governmental and political processes. Requiring registration of persons undertaking activities on behalf of a foreign government related entity in circumstances involving the sale of goods and services would impose additional regulatory requirements which are disproportionate and unjustified, and would not add to the transparency objectives of the scheme.

491. Paragraph 29(3)(a) specifies that the exemption for persons in this section is limited to circumstances where the foreign principal is a ***foreign government related entity***.

Foreign government related entity is defined in section 10 of the Act.

492. The term ***person*** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

493. Paragraph 29(3)(b) provides that the exemption applies if the activity is a commercial or business pursuit undertaken by the person under the name of the foreign principal or a substantially similar name.

494. The term *commercial or business pursuit* is not defined and is intended to take its ordinary meaning, to include activities relating to trade, commerce, buying, selling, dealing and marketing.

495. It is intended that slight variations between the name of the person undertaking the activities and the foreign principal be permitted if it is abundantly clear that the person and the foreign principal relate to the same foreign government related entity.

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

496. Subsection 29(4) provides that the exemptions in subsections 29(1),(2) and (3) do not apply in relation to an activity undertaken by a former Cabinet Minister or recent designated position holder.

Section 29A – Exemption: industry representative bodies

497. Section 29A provides an exemption for professional industry bodies representing the collective interests of its members (both foreign and domestic) under Division 4 of Part 2 of the Act.

498. Section 29A provides that a person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- the person is an entity formed in Australia, or incorporated under a law of the Commonwealth, a State or a Territory (an ***Australian entity***)
- the person's purpose is to represent the interests of business or a particular sector of business or industry
- the person has members who are also Australian entities, and
- the activity is, or relates primarily to, representing the interests of business, or the particular sector, as a whole.

499. The term ***person*** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)

- any combination of individuals who together constitute a body
- an entity or group 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.

500. Paragraph 29A(a) provides that the exemption only applies to a person who is an entity formed in Australia or incorporated under a law of the Commonwealth, a State or a Territory.

501. Paragraph 29A(b) provides that the person must represent the interests of business or a particular sector of business or industry. The terms ‘business’ and ‘industry’ are not defined and are intended to take their ordinary meaning.

- *Business* is intended to refer to a person, partnership or corporation engaged in business, an established or going enterprise or concern.
- *Industry* is intended to refer to a particular branch of trade or manufacture, for example, the banking industry or the finance industry.

502. Paragraph 29A(c) requires the person to have members who are also Australian entities (as described in paragraph 29A(a)). This means that the exemption will not apply to a person whose entire membership is comprised of persons that are *foreign principals* within the definition in section 10 of the Act.

503. Paragraph 29A(d) provides that the activity must be, or primarily relate to, representing the interest of business or the particular sector as a whole. This means that, if the person was to undertake the activity on behalf of a single member, rather than the industry as a whole, the person would fall outside the scope of the exemption. However, if the industry body is representing the industry or sector generally then the paragraph will be satisfied. It is not necessary for the industry body to be representing the entire industry, as long as they are not only representing the interests of a single member (who is a foreign principal).

504. For example, the purpose of an industry representative body may be to represent the telecommunications industry as a whole, including providers of mobile telephone services and carriage service providers. The industry representative body may have a foreign government related entity that provides mobile telephone services as one of its members. The industry representative body will have the benefit of the exemption even if they are only representing their members who are mobile telephone providers, rather than their entire membership (including carriage service providers). This reflects the reality that some policy issues on which an industry representative body will lobby government are sector specific.

505. The term *primarily* is not defined and will be given its ordinary meaning. This term is intended to convey that the activities covered by the exemption at section 29A must be able to be chiefly or principally considered as being done to represent the interests of business or the particular sector as a whole.

Section 29B – Exemption: personal representation in relation to administrative process etc.

506. Section 29B provides an exemption for representations made by an individual on behalf of a foreign principal who is also an individual in relation to a government administrative process involving the foreign principal, or matters affecting the personal welfare of the foreign principal.

507. Individuals can fall within the definition of *foreign principal* in section 10 due to paragraph (d) of the definition, which refers to a *foreign government related individual*.

508. Section 29B provides that an individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal who is also an individual if:

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

509. Examples of where this exemption is intended may apply include:

- where an individual writes to a Government Minister or member of the Parliament in relation to a foreign relative's visa application
- where a student welfare officer at a university makes representations to the Government on behalf of an international student in relation to their visa application, and
- where a person makes representations to Government in relation to a foreign individual in immigration detention.

510. The term *individual* is not defined for the purposes of section 29 and is intended to take its ordinary meaning, being a single human being as distinguished from a group. It does not include companies or other types of entities or organisations.

511. The phrase 'know each other personally' is not defined and is intended to capture circumstances where there is a relationship or level of acquaintance between the individual and the foreign principal. This exemption is not intended to apply when the individual and the foreign principal do not have a relationship or are unknown to each other personally.

512. The term *primarily* is not defined and will be given its ordinary meaning. This term is intended to convey that the activities covered by the exemption at section 29B must be able to be chiefly or principally considered as being done to represent the interests of the foreign principal.

513. The phrase ‘representing in good faith’ is not defined and will take its ordinary meaning, that is, to refer to circumstances where a person acts with honesty and with sincere intention.

514. The term ‘administrative process’ is not defined and will take its ordinary meaning. This will cover, for example, processes under the *Migration Act 1958*.

515. The term ‘personal welfare’ is not defined and will take its ordinary meaning, that is, to relate to a particular person’s wellbeing.

Section 29C – Exemption: registered charities

516. Section 29C provides an exemption for registered charities undertaking activities (other than disbursement activities) in pursuit of the person’s charitable purpose where, at the time the activity is undertaken, it is evident to the public or disclosed to the public that the person is undertaking the activity on behalf of a particular foreign principal.

517. The exemption at section 29C will apply to an activity a person undertakes on behalf of a foreign principal if:

- the person is registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012*
- the activity is undertaken in pursuit of the person’s charitable purpose within the meaning of Part 3 of the *Charities Act 2013*
- the activity is not disbursement activity, and
- at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:
 - the fact that the person is undertaking the activity on behalf of a foreign principal
 - the identity of the foreign principal.

518. Paragraph 29C(a) requires the person to be registered as a charity under the *Australian Charities and Not-for-profits Commission Act 2012*. Charity registration is not a requirement for any particular entity but it is required to receive charity tax concessions and some categories of deductible gift recipient endorsement, which allows the entity to receive gifts for which the donor can claim a tax deduction. Charities must register with the Australian Charities and Not-for-profits Commission before they can receive charity tax concessions from the Australian Tax Office (such as income tax exemption, GST concessions and Fringe Benefit Tax concessions).

519. Paragraph 29C(b) requires the activity to be undertaken in pursuit of the person's charitable purpose within the meaning of Part 3 of the *Charities Act 2013*. Section 12 of the *Charities Act 2013* defines 'charitable purpose' to mean any of the following:

- (a) the purpose of advancing health
- (b) the purpose of advancing education
- (c) the purpose of advancing social or public welfare
- (d) the purpose of advancing religion
- (e) the purpose of advancing culture
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia
- (g) the purpose of promoting or protecting human rights
- (h) the purpose of advancing the security or safety of Australia or the Australian public
- (i) the purpose of preventing or relieving the suffering of animals
- (j) the purpose of advancing the natural environment
- (k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j)
- (l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:
 - (i) in the case of promoting a change – the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k), or
 - (ii) in the case of opposing a change – the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

520. Paragraph 29C(c) provides that the exemption only applies if the activity is not disbursement activity. The definition of **disbursement activity** in section 10 (as amended by Amendment 10) provides that a person undertakes disbursement activity if the person disburses money or things of value, and 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*.

521. Paragraph 29C(d) provides that the exemption only applies if, at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:

- the fact that the person is undertaking the activity on behalf of a foreign principal
- the identity of the foreign principal.

522. This ensures that registration is not required under the scheme when it is clear that the activities undertaken by the person can be clearly attributed to and linked with the foreign principal and that relationship is apparent to the public.

Section 29D – Exemption: artistic purposes

523. Section 29D which provides an exemption for a person whose purpose is, or relates primarily to, the arts undertaking activities (other than disbursement activities) that are, or relate primarily to, the person's artistic purposes where, at the time the activity is undertaken, it is evident to the public or disclosed to the public that the person is undertaking the activity on behalf of a particular foreign principal.

524. The new exemption at section 29D will apply to an activity a person undertakes on behalf of a foreign principal if:

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

525. Paragraph 29D(a) provides that, where the person is not an individual, the person's purpose must be, or relate primarily to, the arts. The term *arts* is not defined and is intended to take its ordinary meaning as referring to painting, sculpture, music, theatre, literature and

other similar endeavours. The term *primarily* is not defined and will be given its ordinary meaning. This term is intended to convey that the activities covered by the exemption at section 29C must be able to be chiefly or principally considered as being the arts or related to the arts. Paragraph 29D(a) also requires the activity to be, or relate primarily to, or be incidental to, the person's artistic purpose.

526. The term *incidental* is intended to attract a narrow meaning. The Macquarie Dictionary defines the term to mean:

- happening or likely to happen in fortuitous or subordinate conjunction with something else
- incurred causally and in addition to the regular or main amount
- something incidental, as a circumstance
- minor expenses, and
- incidental to, liable to happen in connection with; naturally appertaining to.

527. In the context of the exemption for artistic purposes in section 29D, the term 'incidental' is intended to only take the final of these dictionary meanings – incidental to, liable to happen in connection with; naturally appertaining to. Some of the other meanings require only a slight connection, which is not sufficient for the exemption to apply.

528. Paragraph 29D(b) requires that, where the person is an individual, the person's purpose in undertaking the activity must be, or relate primarily to, the arts. The terms in paragraph 29D(b) are to be interpreted consistently with the terms used in paragraph 29D(a).

529. Paragraph 29D(c) provides that the exemption only applies if the activity is not disbursement activity. The definition of ***disbursement activity*** in section 10 (as amended by Amendment 10) provides that a person undertakes disbursement activity if the person disburses money or things of value, and 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*.

530. Paragraph 29D(d) provides that the exemption only applies if, at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:

- the fact that the person is undertaking the activity on behalf of a foreign principal
- the identity of the foreign principal.

531. This ensures that registration is not required under the scheme when it is clear that the activities undertaken by the person can be clearly attributed to and linked with the foreign principal and that relationship is apparent to the public.

Section 29E – Exemption: certain registered organisations

532. Section 29E provides an exemption for certain registered organisations.

533. This exemption applies to an activity a person undertakes on behalf of a foreign principal if:

- 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*
- the activity is undertaken in the interests of members of the organisation in Australia
- the activity is not communications activity or disbursement activity, and
- at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:
 - the fact that the person is undertaking the activity on behalf of a foreign principal
 - the identity of the foreign principal.

534. Paragraph 29E(a) requires the person to be an association of employees, or an enterprise association, that is registered as an organisation under the *Fair Work (Registered Organisations) Act 2009*. Section 18B of the Fair Work (Registered Organisations) Act defines federally registrable employee associations and section 18C defines federally registrable enterprise associations.

535. Paragraph 29E(b) requires the activities to be undertaken in the interests of members of the association in Australia. This ensures that an association covered by paragraph 29E(a) will only benefit from the exemption if it is acting in the interests of its Australian members. To the extent such an association is undertaking activities for other purposes, including benefiting any foreign persons, the exemption will not be available.

536. Paragraph 29E(c) provides that the exemption does not apply if the relevant organisation is engaging in communications activity or disbursement activity. **Communications activity** is defined in section 13 (as amended by Amendments 37 and 38). The definition of **disbursement activity** in section 10 (as amended by Amendment 10) provides that a person undertakes disbursement activity if the person disburses money or things of value, and 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*.

537. Paragraph 29E(d) provides that the exemption only applies if, at the time the activity is undertaken, both of the following matters are either apparent to the public or disclosed to the public:

- the fact that the person is undertaking the activity on behalf of a foreign principal

- the identity of the foreign principal.

538. This ensures that registration is not required under the scheme when it is clear that the activities undertaken by the person can be clearly attributed to and linked with the foreign principal and that relationship is apparent to the public.

Section 29F – Exemption: activities of certain professions

539. Section 29F provides an exemption for the activities of members of certain professions.

540. This exemption applies to an activity a person undertakes on behalf of a foreign principal if:

- the person's profession is any of the following:
 - a tax agent
 - a customs broker
 - a liquidator or receiver
- the activity is undertaken in the ordinary course of the person's practice of that profession
- 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
- 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:
 - the fact that the person is undertaking the activity on behalf of a foreign principal
 - the identity of the foreign principal.

541. Paragraph 29F(a) applies where the person's profession is a tax agent, customs broker, liquidator or receiver.

- *Tax agents* who provide services for fee or reward are required to be registered with the Tax Practitioners Board. Tax agent services related to:
 - working out or advising about liabilities, obligations or entitlements of clients under a taxation law, or
 - representing entities in their dealings with the Commissioner of Taxation

where the client can be reasonably expected to rely on the service to satisfy liabilities or obligations or to claim entitlements under a taxation law.

- *Customs brokers* will include persons who act as professional agents for importers and exporters and prepare and submit documents for clearing goods through customs.
- *Liquidators* are persons who are appointed to wind up a company by collecting a company's property and applying the assets in paying the company's creditors and distributing any surpluses. Liquidators may also investigate the reason for a company's failure.
- *Receivers*, sometimes also known as administrators, are appointed where a company is experiencing financial difficulties to take full control of the company to try to work out a way to save the company or its business.

542. Paragraph 29F(b) applies where the activity is undertaken in the ordinary course of the person's practice of the relevant profession listed in paragraph 29F(a). The reference to 'the ordinary course of the person's practice' of the profession is intended to implement the PJCIS's reference to the 'day to day' work of the profession in Recommendation 26. The exemption will only be available when the person is engaged in the ordinary course of their business. If they engage in registrable activities in some other capacity, then the exemption may not be available.

543. Paragraph 29F(c) applies where 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. The term 'administrative process' is not defined and will take its ordinary meaning. This will include dealings with government bodies, such as the Australian Securities and Investment Commission or the Australian Border Force.

544. The term 'incidental' is intended to attract a narrow meaning. The Macquarie Dictionary defines the term to mean:

- happening or likely to happen in fortuitous or subordinate conjunction with something else
- incurred causally and in addition to the regular or main amount
- something incidental, as a circumstance
- minor expenses, and
- incidental to, liable to happen in connection with; naturally appertaining to.

545. In the context of exemption in section 29F, the term 'incidental' is intended to only take the final of these dictionary meanings – incidental to, liable to happen in connection with; naturally appertaining to. Some of the other meanings require only a slight connection, which is not sufficient for the exemption to apply.

546. The term 'primarily' is not defined and will be given its ordinary meaning. This term is intended to convey that the activities covered by the exemption at section 29F must be able to be chiefly or principally considered as being done in the provision of representation in relation to a government administrative process involving the foreign principal.

547. Paragraph 29F(d) provides that the exemption only applies if, 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:

- the fact that the person is undertaking the activity on behalf of a foreign principal
- the identity of the foreign principal.

548. This ensures that registration is not required under the scheme when it is clear that the activities undertaken by the individual can be clearly attributed to and linked with the foreign principal and the relationship is apparent to the public.

Section 30 – Exemption: prescribed circumstances

549. Section 30 provides that 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.

550. Section 30 provides flexibility in the operation of the scheme, by allowing for rules to be made under section 71 specifying additional exemptions to registration. This ensures the scheme can adapt and be responsive to new scenarios in which an exemption may be justified.

Division 5—End of registration

Section 31 – Notice of end of liability to register

551. Subsection 31(1) provides that a registrant may give notice to the Secretary in order to end their registration.

552. Under paragraph 31(1)(a), a person must be satisfied that the person has ceased to undertake activities on behalf of the foreign principal that are registrable in relation to the foreign principal. Under paragraph 31(1)(b), the person must also be satisfied that there is no registrable arrangement in existence between the person and the foreign principal.

553. Consistent with section 32, a notice under section 31 has the effect of ending the person's registration under the scheme. This is reflected in Note 1 to subsection 31(1).

554. If a person gives a notice under subsection 31(1) while a registrable arrangement is in fact still in existence with the foreign principal specified in the notice, the person continues to be liable to register under subsection 19(1) despite the giving of the notice. As described at sections 17 and 18, when a person is liable to register under the scheme is not the same as when a person is registered under the scheme. As such, a person's liability to register under the scheme will continue in circumstances where they have given notice under subsection 31(1) and their registration has ended, but they continue to have a registrable arrangement with the foreign principal.

555. By giving a notice when the person still has the registrable arrangement with a foreign principal, the person may commit an offence under section 57A of this Act or under section 137.1 of the Criminal Code.

- Section 57A provides offences for giving a notice under this section, when the person knows, or is reckless as to whether a registrable arrangement continues to exist. The maximum penalty for these offences differ depending on the person's level of knowledge and whether a registrable activity occurs after the notice has been given: if the person knows a registrable arrangement continues to exist and an activity does occur, the maximum penalty is five years imprisonment, whereas if an activity does not occur then the maximum penalty is 12 months imprisonment.
- Section 137.1 of the Criminal Code provides that a person commits an offence if the person gives false or misleading information to another person which is a Commonwealth entity. The maximum penalty for this offence is 12 months imprisonment.

556. Note 2 to subsection 31(1) clarifies that these are the implications of giving a notice under subsection 31(1) while a registrable arrangement is still in place.

557. Subsection 31(2) provides that the notice to the Secretary under this section must be:

- in writing
- in an approved form (if any)
- given in an approved manner, and
- be accompanied by any information or documents required to be provided by the Secretary.

558. ***Approved form*** and ***approved manner*** are defined at section 66 to mean the form and manner that has been approved in writing by the Secretary for the purposes of the Act.

559. Subsection 31(3) provides that the notice to the Secretary must specify a day on which registration in relation to the foreign principal should cease.

560. Paragraph 31(3)(a) provides that the day must not be earlier than the day that the notice is given to the Secretary. This is intended to clarify that notice of end of registration cannot be given retrospectively.

561. Paragraph 31(3)(b) provides that if the notice is given during the annual renewal period, it must not be later than the last day of the renewal period. Section 39 requires a person to renew their registration in relation to a foreign principal on an annual basis, in accordance with the requirements of that paragraph. The period for renewing registration, known as the 'renewal period,' is set out at subsection 39(3). In most circumstances, annual renewal will be required within one year and one month of an application for registration under section 16. This paragraph clarifies that, by the end of the renewal period each year, a person must either renew or end their registration under the scheme in relation to a foreign

principal. If the person has not done either of these things, and they are still liable to register, they may be committing an offence under the Act.

562. An example of the effect of subsection 31(3)(b) is as follows:

A person registers under the scheme in relation to a foreign principal on 21 January 2024. The last day of the renewal period for the person is 20 February each year thereafter.

If the person gives a notice under subsection 31(1), the date specified in that notice must be before 20 February. If the notice specifies a date after 20 February, the person must first renew their registration in accordance with section 39 before being able to end their registration by giving the required notice under subsection 31(1).

Section 32 – End of registration

563. Section 32 sets out the circumstances in which a person's registration under the scheme ends in relation to a foreign principal. A person's registration in relation to a foreign principal will end on the earliest of:

- the day specified in the notice provided to the Secretary under section 31
- 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, or
- in circumstances prescribed by the rules – the day prescribed in the rules.

564. Paragraph 32(a) provides that, if a person provides a notice to the Secretary under section 31 which specifies a date for the end of the person's registration, the person's registration will cease on that day.

565. Paragraph 32(b) provides that, if a person is required to renew their registration under section 39 and does not do so, then their registration ends on the first day after the renewal period for the registration.

566. As described at sections 17 and 18, when a person is registered under the scheme is not the same as when a person is liable to register under the scheme. As such, a person's liability to register under the scheme will continue in circumstances where their registration has ended in accordance with section 32, if they continue to be liable to register.

567. Paragraph 32(c) provides flexibility for the rules to prescribe circumstances in which a person's registration under the scheme can end. If the rules prescribe such matters, paragraph 32(c) provides that a person's registration will end on the day prescribed by the rules.

Part 3—Responsibilities of registrants under the scheme

Division 1—Simplified outline of this Part

Section 33 – Simplified outline of this Part

568. Section 33 provides a simplified outline of Part 3, which sets out the responsibilities of persons who are registered under the scheme. Such responsibilities include reporting material changes in circumstances and disbursement activities undertaken; updating registration details when a voting period begins; making disclosures in communication activities; annual renewal of registration; and keeping proper records.

569. While simplified outlines are included to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.

Division 2—Reporting to the Secretary

570. Division 2 of Part 3 outlines the reporting obligations of registrants under this scheme. The reporting obligations are intended to give effect to the transparency objectives of the scheme by ensuring that current and accurate information is provided by registrants. The reporting obligations seek to balance the regulatory burden on registrants against the transparency objectives of the scheme.

Section 34 – Reporting material changes in circumstances

571. Subsection 34(1) provides that a person who is registered under the scheme must give the Secretary a notice correcting an inaccuracy of misleading impression if the person becomes aware that information provided to the Secretary for the purposes of registration:

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

572. It is an offence under subsection 58(1) for a registrant not to give this notice to the Secretary. It is also an offence under section 137.1 of the Criminal Code for a person to give false or misleading information in compliance with a law of the Commonwealth. The Note to subsection 34(1) clarifies that these offences apply.

573. Subsection 34(2) provides that the person must provide the notice to the Secretary within 14 days after the day that the person becomes aware of the matter. This is intended to facilitate timely correction of information which may otherwise mislead the Secretary or the broader public about the activities undertaken by the person on behalf of a foreign principal or a registrable arrangement between the person and the foreign principal.

574. Subsection 34(3) provides that the notice given under subsection 34(1) must be:

- in writing
- in an approved form (if any)

- given in an approved manner (if any), and
- be accompanied by any information or documents required by the Secretary.

575. ***Approved form*** and ***approved manner*** are defined at section 66 to mean the form and manner that has been approved in writing by the Secretary for the purposes of the Act.

576. Subsection 34(4) sets out examples of circumstances in which a person must give a notice to the Secretary to under this section.

577. Paragraph 34(4)(a) clarifies that a person would be required to report a material change in circumstances where a person starts to undertake a different kind of registrable activity on behalf of the same foreign principal for whom they are already registered under the scheme. For example, a registrant who is registered as undertaking general political lobbying activities on behalf of a foreign principal would need to report a material change in circumstances under subsection 34(1) if that registrant begins to undertake communications activity on behalf of the foreign principal.

578. Paragraph 34(4)(b) clarifies that a person would be required to report a material change in circumstances where a person adds another kind of registrable activity to a registrable arrangement with a foreign principal for whom they are already registered under the scheme. For example, a registrant who has an arrangement with a foreign principal to undertake parliamentary lobbying activities would need to report a material change in circumstances under subsection 34(1) if the arrangement is amended so that the registrant will also undertake communications activities in Australia for the purpose of political or governmental influence on behalf of the foreign principal.

579. Paragraph 34(4)(c) clarifies that a person would be required to report a material change in circumstances where a 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. For example, a person who previously claimed an exemption under Division 4 of Part 2 in relation to an activity undertaken on behalf of a foreign principal relating to humanitarian aid or assistance, would be required to report a material change in circumstances under subsection 34(1) if the person is no longer entitled to that exemption in relation to their registrable activities on behalf of a foreign principal.

580. Paragraph 34(4)(d) clarifies that a person would be required to report a material change in circumstances where consideration starts to be paid, or there is a change to consideration payable, to the registrant in relation to any registrable activities undertaken on behalf of a foreign principal. For example, a person would be required to report a material change in circumstances under subsection 34(1) if the payment for a registrant undertaking parliamentary lobbying activities on behalf of a foreign principal was doubled but the work remained the same.

581. The circumstances listed in subsection 34(4) of the Act are not an exhaustive list of all of the circumstances in which a person could be required to report to the Secretary under section 34. Section 15AD of the Acts Interpretation Act provides that, if an Act includes an example of the operation of the provision, the example is not exhaustive, and may extend the operation of a provision. As such, the circumstances listed in subsection 34(4) are not

intended to limit the possible matters that may amount to a material change in circumstances under the Act.

582. Subsection 34(5) provides that the requirement to report material changes in circumstances does not apply if the information is included in a notice given in accordance with section 36 (reporting on registration review when voting period begins) or section 37 (reporting registrable activity during voting periods). Subsection 34(5) applies even if the notice under section 34 should have been given before the notice under sections 36 or 37.

583. Sections 36 and 37 impose additional reporting obligations during voting periods. The purpose of subsection 34(5) is to allow reports provided under those sections that disclose something amounting to a material change in circumstances to be sufficient notification of a change for the purposes of section 34. This ensures that a registrant does not need to report such a matter twice. The provision of this information, even if it is provided after the notice should have been given under section 34, meets the transparency objectives of the scheme.

584. The Note to subsection 34(5) clarifies that a defendant bears an evidential burden in relation to the matters in the subsection. This is relevant for the offence at subsection 58(1) (failing to fulfil reporting responsibility), allowing a person to show that they have fulfilled the reporting obligation at section 34 by reporting under sections 36 or 37. Section 13.3 of the Criminal Code provides that in the case of a standard ‘evidential burden’ defence, the defendant bears the burden of pointing to evidence that suggests a reasonable possibility that the defence is made out. If this is done, the prosecution must refute the defence beyond reasonable doubt (section 13.1). It is appropriate for a defendant to bear an evidential burden for these matters as they will be best placed to know whether information has been reported under section 36 or 37 that would satisfy the requirements of section 34. Imposing an evidential burden on the defendant is consistent with principles set out in the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. The Guide states a defendant will usually bear an evidential burden for defences, which can include ‘words of exception, exemption, excuse, qualification or justification.’ The Guide also highlights that imposing an evidential burden does not displace the prosecutor’s burden, but merely defers it.

585. Imposing an evidential burden on the defendant is appropriate because the matters set out at subsection 34(5) are matters that are peculiarly within the knowledge of the defendant. An example is as follows:

Person A is registered with the scheme with relation to activities undertaken on behalf of foreign government B. A voting period begins for a federal election and Person A provides the Secretary with a notice under section 36, advising that he or she will undertake a new registrable activity of distributing information and materials on behalf of foreign government B. The Secretary subsequently contacts Person A when it is discovered that he or she is also managing a social media campaign for foreign government B and states that Person A should have reported this in accordance with section 34, ‘reporting material changes in circumstances.’

In response, Person A advises that this had been reported as part of the notice provided to the Secretary under section 36, in which it was described, at a high-level, as ‘distributing information and materials.’ The way in which Person A conceives of

and describes his or her registrable activities is peculiarly within the mind of Person A. Person A is best placed to demonstrate that he or she has not contravened section 34 and has in fact already provided the information in question, as per section 36. This information is peculiarly within the mind of the Person A, and aligns with the principles in the Guide to Framing Commonwealth Offences that support the establishment of offence-specific defences.

586. The responsibility to report material changes in circumstances under section 34 relates to each separate registration a person may have in relation to each separate foreign principal with whom they have an arrangement or on whose behalf they undertake activities.

587. Something may be inaccurate or misleading in a material particular in one circumstance, but not another. For example, something may be a significant change in consideration paid under a contract for one registrant operating as a small business, but not a significant change under another contract for a registrant operating as a multi-national business.

588. The requirement to report material changes in circumstances under section 34 seeks to balance the competing considerations of requiring registrants to provide current information under the scheme without imposing significant burdens on a registrant to comply with its provisions. An alternative approach to requiring registrants to report material changes in circumstances would be to require all registrants to renew their registration on a more regular basis. Reporting material changes in circumstances as per the requirements in section 34 is intended to impose a lesser burden upon all registrants, while still ensuring current and accurate information is provided in a timely manner, especially in the period between annual renewals of registration.

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

589. Subsection 35(1) provides that a registrant must report to the Secretary if he or she engages in registrable disbursement activity on behalf of a foreign principal and the total amount of money or things of value disbursed reaches the electoral donations threshold or a multiple of that threshold.

590. Subsection 35(1) requires a person to give the Secretary a notice specifying the total value reached if:

- a person is registered under the scheme in relation to a foreign principal
- the person undertakes disbursement activity on behalf of the foreign principal
- 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
- the total value of the money or things of value disbursed in the course of the disbursement activity:
 - reaches the electoral donations threshold, or

- reaches a multiple of that threshold.

591. **Disbursement activity** is defined in section 10 to provide that a person undertakes disbursement activity if the person disburses money or things of value, and neither the person disbursing, 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.

592. **Electoral donations threshold** is defined in section 10 to mean \$13,500.

593. Paragraph 35(1)(d) is intended to be a cumulative threshold over multiple transactions, rather than a threshold per transaction. Registrants will be required to report every time that the electoral donations threshold is reached, or a multiple of that threshold, in relation to a particular foreign principal.

594. It is an offence under subsection 58(1) for a registrant not to give this notice to the Secretary. It is also an offence under section 137.1 of the Criminal Code for a person to give false or misleading information in compliance with a law of the Commonwealth. The Note to subsection 35(1) clarifies that these offences apply.

595. Subsection 35(2) provides that the notice must be given to the Secretary before the end of the period of 14 days after the day the total value of the money or things of value disbursed reaches the electoral donations threshold, or a multiple thereof. This is intended to facilitate the timely provision of information about disbursement activity to ensure transparency about disbursement activity undertaken on behalf of a foreign principal is up to date in the period between annual renewals.

596. Subsection 35(3) provides that the notice given under subsection 35(1) must be:

- in writing
- in an approved form (if any)
- given in an approved manner (if any), and
- be accompanied by any information or documents required by the Secretary.

597. **Approved form** and **approved manner** are defined at section 66 to mean the form and manner that has been approved in writing by the Secretary for the purposes of the Act.

598. Subsection 35(4) provides that this section does not apply if the electoral donations threshold, or a multiple of that threshold, is reached on a day in a voting period for a federal election or a designated vote. The effect of subsection 35(4) and section 37 is that different reporting obligations are imposed on registrants in respect of disbursement activities depending upon when the disbursement activity is undertaken. If the disbursement activity occurs on a day in a voting period for a federal election or a designated vote, section 37 requires the registrant to report more regularly than at any other time. As such, if the electoral donations threshold or a multiple of that threshold is reached during this time, it must be reported to the Secretary within seven days under subsection 37(4).

599. The Note to subsection 35(4) clarifies that section 37 applies in these circumstances.

Section 36 – Reporting on registration review when voting period begins

600. Section 36 requires a registrant to review their registration under the scheme, confirm the accuracy of the information provided under that registration, and provide updated information if needed, when a voting period begins. This is necessary because voting periods are periods of heightened political activity, when activities intended to influence political and governmental processes are particularly required to be transparent so that members of the Australian community can make informed decisions about their vote.

601. Subsection 36(1) provides that, 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:

- review the information provided by the person to the Secretary in relation to the registration, and
- give the Secretary a notice in relation to the information:
 - confirming that the registration is up to date, or
 - if the registration is not up to date, updating any information.

602. A ***voting period*** is defined in section 10 to mean any of the following:

- for a federal election—the period:
 - beginning the day of the issue of the writ for the election under the Commonwealth Electoral Act, and
 - ending at the time determined in accordance with the Commonwealth Electoral 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
- for a referendum—the period:
 - beginning on the day of the issue of the writ for the referendum under the Referendum Act, and
 - ending at the time determined in accordance with the Referendum 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
- 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.

603. A ***federal election*** means a House of Representatives election or a Senate election within the meaning of the Commonwealth Electoral Act. A ***designated vote*** means a

referendum, and a vote, survey, or other process for the expression of opinion, of the kind prescribed by the rules for the purposes of the definition.

604. Section 36 does not apply if the voting period is in relation to a by-election as defined in the Act.

605. It is an offence under subsection 58(1) for a registrant not to give this notice to the Secretary. It is also an offence under section 137.1 of the Criminal Code for a person to give false or misleading information in compliance with a law of the Commonwealth. The Note to subsection 36(1) clarifies that these offences apply.

606. Subsection 36(2) provides that the notice must be given to the Secretary before the end of the period of 14 days after the voting period begins. This is intended to facilitate the timely provision of scheme information relating to registrants and registrable activities, and seeks to ensure the activities of those acting on behalf of foreign principals in the period prior to the commencement of a voting period is transparent and accessible to the public.

607. Subsection 36(3) provides that the notice given under subsection 36(1) must be:

- in writing
- in an approved form (if any)
- given in an approved manner (if any), and
- be accompanied by any information or documents required by the Secretary.

608. **Approved form** and **approved manner** are defined at section 66 to mean the form and manner that has been approved in writing by the Secretary for the purposes of the Act.

609. Subsection 36(4) provides that subsection 36(1) does not apply if the person applied for registration or renewed their registration within the 14 days before the voting period began. This subsection excludes persons who have registered or renewed their registration within the preceding 14 days from being required to do so again when a voting period commences, as the information provided by those registrants is sufficiently accurate and current. Requiring a registrant to provide further information within 14 days of updating their details or activities undertaken would be unlikely to result in a transparency gain and could be considered an unnecessary impost on registrants. To the extent that the scheme information previously provided is incorrect or needs to be updated, reporting requirements under section 34 relating to material changes would continue to apply and provide the necessary transparency during the voting period.

Section 37 – Reporting registrable activity during voting periods

610. Section 37 requires a registrant to notify the Secretary when certain registrable activities are undertaken on behalf of a foreign principal during a voting period for a federal election or a designated vote. This is necessary because voting periods are periods of heightened political activity, when activities intended to influence political and governmental processes are particularly required to be transparent so that members of the Australian community can make informed decisions about their vote.

611. Subsection 37(1) requires a person to give the Secretary a notice in relation to an activity if:

- a person is registered under the scheme in relation to a foreign principal
- 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
- subsections 37(2) or (3) applies in relation to the activity, and
- the activity relates to the federal election or the designated vote.

612. A ***voting period*** is defined in section 10 to mean any of the following:

- for a federal election—the period:
 - beginning the day of the issue of the writ for the election under the Commonwealth Electoral Act, and
 - ending at the time determined in accordance with the Commonwealth Electoral 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
- for a referendum—the period:
 - beginning on the day of the issue of the writ for the referendum under the Referendum Act, and
 - ending at the time determined in accordance with the Referendum 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
- 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.

613. A ***federal election*** means a House of Representatives election or a Senate election within the meaning of the Commonwealth Electoral Act. A ***designated vote*** means a referendum, and a vote, survey, or other process for the expression of opinion, of the kind prescribed by the rules for the purposes of the definition.

614. The registrable activities to which section 37 applies are set out at subsections 37(2) and (3). The effect of these subsections is that additional reporting obligations apply in relation to a person who undertakes activities on behalf of a foreign principal, within the meaning of sections 20 and 21, at any time in the voting period for a federal election (other than a by-election) or for a designated vote and which relate to the particular federal election or designated vote.

615. Subsection 37(2) applies in relation to the activity if it is registrable in relation to the foreign principal within the meaning of:

- section 20 (parliamentary lobbying on behalf of a foreign government), or
- section 21 (activities in Australia for the purpose of political or governmental influence) other than disbursement activity (which is separately dealt with under subsection 37(3)).

616. Subsection 37(3) applies in relation to disbursement activity if:

- 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
- the total value of the money or things of value disbursed on behalf of a foreign principal reaches the electoral donations threshold or a multiple of that threshold.

617. **Disbursement activity** is defined in section 10 to provide that a person undertakes disbursement activity if the person disburses money or things of value, and neither the person disbursing, 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.

618. **Electoral donations threshold** is defined in section 10 to mean \$13,500.

619. It is an offence under subsection 58(1) for a registrant not to give this notice to the Secretary. It is also an offence under section 137.1 of the Criminal Code for a person to give false or misleading information in compliance with a law of the Commonwealth. The Note to subsection 36(1) clarifies that these offences apply.

620. Subsection 37(4) provides that the notice must be given to the Secretary before the end of the period of seven days after:

- if subsection 37(2) applies in relation to the activity – the day the person undertakes the activity, or
- if subsection 37(3) applies in relation to the activity – the day the threshold or multiple is reached.

621. If an activity takes place over a number of days in the voting period, the intention is for the seven day period to commence on the day when the activities commence. This subsection seeks to ensure that registrable activities undertaken by those acting on behalf of foreign principals in a voting period are transparent and accessible to the public, and they are able to take this into account when assessing policy statements made by parties and candidates.

622. Subsection 37(5) provides that the notice given under subsection 37(1) must be:

- in writing

- in an approved form (if any)
- given in an approved manner (if any), and
- be accompanied by any information or documents required by the Secretary.

623. *Approved form* and *approved manner* are defined at section 66 to mean the form and manner that has been approved in writing by the Secretary for the purposes of the Act.

Division 3—Other responsibilities

Section 38 – Disclosure in communications activity

624. Section 38 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.

625. This requirement is intended to provide transparency about the forms and sources of foreign influence in communications products, to assist the Australian Government and the public to assess communications products, their provenance and their content.

626. Subsection 38(1) requires a person to make a disclosure about the foreign principal (in accordance with the rules) if:

- a person is registered under the scheme in relation to a foreign principal
- the person undertakes communications activity on behalf of the foreign principal, and
- 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).

627. Examples of how the section 38 disclosure requirements may apply are as follows:

Example 1: The Australian Government has commenced discussions with the government of Country Y about a project that will increase economic ties between the two countries. The Australian Government has not yet reached a final decision about whether it will join the project. Country Y engages an Australian public relations firm to produce a television advertisement promoting the benefits of the project being led by Country Y. In this example, the Australian public relations firm would be required to register under section 21, as it is undertaking a communications activity on behalf of a foreign principal in Australia for the purpose of political or governmental influence. The television advertisement produced by the public relations firm would need to make a disclosure about the foreign principal in accordance with rules made under section 38.

Example 2: Person A is a prominent spokesperson in the Australian technology sector. Person A enters into an agreement with a software company which is seeking to influence Australian Government policy on cloud storage of data.

Foreign country X owns 50 per cent of the issued share capital of the software company, making it a foreign government related entity. The software company asks Person A to write a book that promotes its views on such policies. In this example, there is a public interest in knowing that the book has been written and published in accordance with an agreement with a foreign government related entity to advocate for its views.

628. The Note in subsection 38(1) clarifies that it is an offence under subsection 58(2) for a registrant not to make the disclosure in communications activities required in this paragraph.

629. Subsection 38(2) provides that the rules for the scheme, that may be made under section 71, may prescribe:

- instances of communications activity
- when and how disclosures are to be made in relation to instances of communications activity
- the content, form and manner of disclosures, and
- circumstances in which a person is exempt from making a disclosure in relation to communications activity.

630. The provision for matters to be prescribed in rules under subsection 38(2) seeks to provide flexibility about particular matters relating to disclosures in communications activity. Such matters may be detailed and technical and not appropriate for inclusion in the primary Act. Examples of the types of matters that might be prescribed by rules in accordance with subsection 38(2) could include, but is not limited to:

- the specific words that must be included in disclosures
- the font size of written disclosures,
- the placement of written disclosures,
- the length of time for which television disclosures must be displayed, and
- any accessibility requirements.

631. Prescription in delegated legislation is also necessary because of the changing nature of matters that will be prescribed in accordance with subsection 38(2). It will be necessary for the rules relating to disclosures to keep abreast of changes in communications technologies and methods, and of community expectations about the transparency of communications activity. It is appropriate that the matters specified at subsection 38(2) be prescribed by rules so that they are responsive and adaptive to these changes.

Section 39 – Annual renewal of registration

632. Section 39 provides that by the end of the renewal period for a person's registration in relation to a foreign principal, a person must either:

- renew their registration if they remain liable to register in relation to the foreign principal, or
- give the Secretary a notice under section 31 if they are no longer liable to register.

633. The terms ‘liable to register’ and ‘no longer liable to register’ are given their meaning in section 18 and 19 respectively. Under section 18 a person is ‘liable to register’ from the date that they become liable to register, until they date that they cease to be liable to register. A person will become liable to register from the time that they undertake a registrable activity on behalf of a foreign principal, or enter in to a registrable arrangement with a foreign principal. Under section 19 a person will cease to be liable to register if they give the Secretary a notice under section 31 specifying a day on which registration is to end, and on that day, no registrable arrangement exists between the person and the foreign principal.

634. If a person continues to undertake activities on behalf of a foreign principal, or has a registrable arrangement with a foreign principal, at the time of renewal of registration, then a person must renew their registration under section 39.

635. The Note to subsection 39(1) clarifies that it is an offence under section 57 for a registrant not to renew their registration if they are liable to do so.

636. Subsection 39(2) provides that the notice given under subsection 39(1) must be:

- in writing
- in an approved form (if any)
- given in an approved manner (if any), and
- be accompanied by any information or documents required by the Secretary.

637. **Approved form** and **approved manner** are defined at section 66 to mean the form and manner that has been approved in writing by the Secretary for the purposes of the Act.

638. Subsection 39(3) sets out the **renewal period** for a person’s registration in relation to a foreign principal. Under subsection 39(3), the renewal period is:

- the month beginning on either:
 - the anniversary of the day the person applied (or most recently applied) under section 16 for registration in relation to the foreign principal, or
 - if another day is specified under paragraph 39(4)(a), that other day, or
- if an extended period is specified under paragraph 39(4)(b), that extended period.

639. Subparagraph 39(3)(a)(i) defines the term renewal period as the month beginning 12 months after a person has applied for registration under section 16. For example, a person who registers on 12 November 2018 would have until 11 December 2019 to renew their registration.

640. The renewal period is calculated from the date of initial registration, and not the date of renewal. An example of this is as follows:

Person A registers under the scheme on 2 January 2019.

As at 2 January 2020, Person A continues to undertake activities on behalf of a foreign principal in accordance with the requirements set out in Division 3 of Part 2 of the Act. Person A has until 1 February 2020 to renew their registration, and does so on 10 January 2020.

As at 2 January 2021, Person A continues to undertake activities on behalf of the foreign principal. Person A has until 1 February 2021 to renew their registration, but fails to do so until 5 June 2021.

As at 21 January 2022, Person A continues to undertake activities on behalf of the foreign principal. Despite renewing their registration in June 2021, Person A has until 1 February 2022 to renew their registration.

641. Subsection 34(4) provides that, on request, the Secretary may, in writing,

- 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 39(3)(a)(ii), or
- if satisfied that exceptional circumstances exist—specify an extended period for the registration, for a specified year, for the purposes of paragraph 39(3)(b).

642. This provides flexibility for the Secretary to amend renewal periods in limited circumstances. The Secretary may only do so upon request from a registrant in writing. An example of this is as follows:

Example 1: Person A registers under the scheme in relation to activities undertaken on behalf of foreign principal X on 2 January 2019. Person A makes further registrations on 5 June 2019 in relation to activities undertaken on behalf of foreign principal Y and on 30 August 2019 in relation to activities undertaken on behalf of foreign principal Z.

If the renewal period was calculated in accordance with subparagraph 39(3)(a)(i), Person A would be required to renew their registrations by 1 February 2019 in relation to foreign principal X, by 4 July 2019 in relation to foreign principal Y and by 29 September 2019 in relation to foreign principal Z.

On application from Person A, the Secretary may determine that the renewal period for all registrations shall be considered to be 2 June 2019. Therefore,

Person A must renew their registrations in relation to all foreign principals on those behalf they are undertaking activities by 1 July each year.

Example 2: Person A registers under the scheme on 3 March 2023 and has a renewal day of 2 April 2024. Person A is seriously ill and applies to the Secretary in writing to extend the renewal period. If satisfied that exceptional circumstances exist, the Secretary could decide that Person A's renewal period be extended until 3 October 2024. However, Person A's renewal in 2025 would continue to be due on 2 April 2025.

643. Subsection 39(5) provides that an instrument made by the Secretary under subsection 39(4) is not a legislative instrument. This provision is intended to clarify that the instruments made are not legislative in nature, as they are specific to the circumstances of the individual registrant and their annual renewal and as such do not fall within the meaning of a legislative instrument under the Legislation Act.

Section 40 – Keeping records

644. Subsection 40(1) requires persons who are registered under the scheme in relation to a foreign principal to maintain appropriate records. Requiring registrants to maintain records supports the transparency objectives of the scheme by ensuring that current and accurate information is maintained in relation to arrangements or activities undertaken on behalf of foreign principals.

645. Subsection 40(1) requires a person who is registered under the scheme in relation to a foreign principal to keep records of the matters listed in subsection 40(2):

- while registered under the scheme in relation to the foreign principal, and
- until the end of five years after the registration ends.

646. The requirement to maintain records for a period of three years following the end of registration is intended to ensure that any investigations or prosecutions under the scheme are not undermined. Activities undertaken on behalf of a foreign principal within the last three years may also continue to have implications for decision-making and public policy in Australia. It is important that such records are not destroyed, and there is an ability for the Secretary or law enforcement to be able to request or obtain access to this information.

647. Subsection 40(1A) provides that, despite the requirement in subsection 40(1) to retain records for three years, a person is not required to keep any particular record for more than 10 years from the day the record was made.

648. Subsection 40(2) sets out an exhaustive list of the matters in relation to which records must be kept. These are:

- any registrable activities that a person undertakes on behalf of a foreign principal
- any benefits provided to the registrant by the foreign principal

- information or material forming part of any communications activity that is registrable in relation to the foreign principal
- any registrable arrangement between the person and the foreign principal, and
- any other information or material communicated or distributed to the public or a section of the public in Australia on behalf of the foreign principal.

649. Certain conduct in relation to records is an offence under subsection 58(3) and section 61. The Note to subsection 40(1) clarifies that these offences apply.

650. Paragraph 40(2)(a) requires the person to keep records of the registrable activities undertaken on behalf of the foreign principal. Registrable activities will be those activities that the person undertakes on behalf of the foreign principal that fall within:

- section 20 (lobbying on behalf of foreign government)
- section 21 (activities in Australia for the purpose of political or governmental influence)
- section 22 (former Cabinet Ministers), and
- section 23 (recent designated position holders).

651. Paragraph 40(2)(b) requires the person to keep records of the benefits provided to the person by the foreign principal. Consistent with the definition in section 10, *benefit* includes any advantage and is not limited to property.

652. Paragraph 40(2)(c) requires the person to keep records of information or material forming part of any communications activity that is registrable in relation to the foreign principal. Consistent with section 13, a person undertakes *communications activity* if the person communicates or distributes information or material to the public or a section of the public. Such activities may be registrable under section 21 (activities in Australia for the purpose of political or governmental influence).

653. Paragraph 40(2)(d) requires the person to keep records of any registrable arrangement between the person and the foreign principal. Consistent with the definition in section 10, a *registrable arrangement* means an arrangement between a person and a foreign principal for the person to undertake an activity that, if undertaken by the person, would be registrable in relation to the foreign principal.

654. Paragraph 40(2)(e) requires the person to keep records of other information or material communicated or distributed to the public or a section of the public in Australia on behalf of the foreign principal. This requirement (as well as the requirement in paragraph 40(2)(c)) ensures that copies of any information or material distributed on behalf of a foreign principal are kept. This will support the monitoring of compliance with the scheme, including the requirement at section 38 of the Act to make disclosures in communications activity.

Part 4—Obtaining and handling scheme information

Division 1—Simplified outline of this Part

Section 41 – Simplified Outline of this Part

655. This section provides a simplified outline of Part 4, which sets out provisions for how scheme information is obtained and handled. This includes provisions in relation to keeping a register of information that is obtained under the scheme; providing the Secretary with the power to obtain information from any person believed to have information relevant to the scheme; making certain scheme information publicly available; and protecting and handling information.

656. Simplified outlines are included to assist readers to understand the substantive provisions. However, the outlines are not intended to be comprehensive and it is intended that the readers should rely on the substantive provisions.

Division 2—Register of scheme information

Section 42 – Secretary must keep a register

657. This section requires the Secretary to keep a register of information in relation to the scheme. The register is intended to hold information collected under the scheme in relation to a person's registration, as well as any information or documents that the scheme has obtained by way of a formal request for information by the Secretary to a person under sections 45 and 46, information that is prescribed by the rules for the purposes of paragraph 43(1)(c) and any other information or documents that the Secretary considers appropriate.

658. Subsection 42(1) formally requires the Secretary to keep a register of information in relation to the scheme.

659. Subsection 42(2) specifies the types of information and documents that must be included on the register for each person who is registered in relation to a foreign principal. These are:

- the name of the person and the foreign principal
- the application for registration and any accompanying information or documents
- any notices given by the person in accordance with Division 2 of Part 3 of the Act as well as any accompanying information or documents
- any renewal of the registration that the person has made, as well as any accompanying information or documents
- a record of any other communications between the person and the Secretary

- any information prescribed by the rules for the purposes of paragraph 43(1)(c) (prescribing circumstances in which the Secretary must make information publicly available) in relation to registrants and is not mentioned anywhere else in subsection 42(2), and
- any other information or documents that the Secretary considers appropriate.

660. The types of information and documents specified in subsection 42(2) are intended to capture the information and documentation essential to achieving the transparency objectives of the scheme and to ensure it is an accurate and comprehensive record.

661. Paragraphs 42(2)(a) and (b) are self-explanatory and require the name of the person, the name of the foreign principal, the application for registration and any accompanying information or documents to be included on the register.

662. Paragraph 42(2)(c) will ensure that any reporting the person has made to the scheme under Division 2 of Part 3 of the Act will be included on the register. Division 2 of Part 3 specifies a number of reporting obligations on the registrant, including:

- reporting any material change in circumstances (section 34)
- reporting any disbursement activity in Australia that is done for the purpose of political or governmental influence (other than in a voting period) (section 35)
- reporting on registration details when a voting period begins (section 36), and
- reporting any registrable activity that is undertaken during voting periods (section 37).

663. Paragraph 42(2)(d) covers any information that is provided when a person renews registration with the scheme. Section 39 requires a registrant to renew their registration annually if they continue to undertake registrable activities on behalf of, or have a registrable arrangement with, a foreign principal. This information, and any documentation attached to the renewal required under section 39, would be included on the register.

664. Paragraph 42(2)(e) covers any record of other communications between the person and the Secretary. This may include, for example, any correspondence or communication the person has had with the Secretary relating to their registration under the scheme, or email correspondence between a registrant and a scheme official about their registration. This information would be included on the register.

665. Paragraph 42(2)(f) covers any information prescribed by the rules for the purpose of paragraph 43(1)(c) in relation to registrants and not mentioned by any other paragraph in this subsection. Paragraph 43(1)(c) provides that rules can be made for the purposes of the Act prescribing information that must be made publicly available in relation to each person registered in relation to a foreign principal. This paragraph provides flexibility for the register to include matters that were not envisaged at the time the scheme was developed.

666. Paragraph 42(2)(g) covers any other information or documents the Secretary considers appropriate to be included in the register. It is intended that this paragraph will

apply to information or documents that relate to a person's registration that is not otherwise covered in subsection 42(2), but which the Secretary considers relevant to the scheme and appropriate to include in the register.

667. Subsection 42(3) requires the Secretary to include the following information and documents on the scheme's register:

- any provisional transparency notices issued under section 14B, and
- any variation or revocation of a transparency notice under section 14E
- for any provisional transparency notices that become final transparency notices under subsection 14C(4) – a statement to that effect.
- any notices given by the Secretary to a person other than a registrant under section 45 (notice requiring information to satisfy Secretary whether person is liable to register under the scheme) or section 46 (notice requiring information relevant to the scheme), and any responses received
- any information prescribed by the rules for the purposes of paragraph 43(1)(c) (prescribing the circumstances in which the Secretary must make information publicly available), other than in relation to registrants and not mentioned in another paragraph of subsection 42(3), and
- any other information or documents the Secretary considers appropriate.

668. This provision seeks to ensure that the register contains all relevant information and documentation essential to achieving the transparency objectives of the scheme and to ensure it is an accurate and complete record.

669. Paragraph 42(3)(aa) refers to any provisional transparency notices issued under section 14B. Subsection 14B(1) provides that, 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 foreign government related individual (as the case requires). The effect of a provisional transparency notice issued under subsection 14B(1) is that a person acting on behalf of a person stated to be a foreign government related entity or a foreign government related individual in a transparency notice may be required to register under the scheme if undertaking activities on behalf of such a person in Australia for the purpose of political or governmental influence.

670. Paragraph 42(3)(ab) refers to any variation or revocation of a transparency notice under section 14E. Subsection 14E(1) provides that the Secretary may vary a transparency notice if the Secretary is satisfied that the details in the notice that identify the person as a foreign government related entity or foreign government related individual (as the case requires) should be updated or corrected. Subsection 14E(2) provides that the Secretary must revoke a transparency notice if the Secretary ceases to be satisfied that the person is a foreign government related entity or foreign government related individual (as the case requires).

671. Paragraph 42(3)(a) refers to a provisional transparency notice that becomes final. Subsection 14C(4) provides that, if the Secretary does not revoke a provisional transparency notice before the end of the period within which a person may make submissions, the provisional transparency notice becomes a final transparency notice.

672. Paragraph 42(3)(a) provides that the Secretary must also include on the register any notices given by the Secretary to a person other than a registrant under section 45 (notice requiring information to satisfy Secretary whether person is liable to register under the scheme) or section 46 (notice requiring information relevant to scheme) and any responses received. This paragraph ensures that the register comprehensively covers circumstances in which a person other than a registrant has been requested to provide further information to the Secretary. In relation to requests made under sections 45 and 46, both the Secretary's request and the person's response is required to be included on the register.

673. Paragraph 42(3)(b) requires any information that is prescribed by the rules for the purposes of paragraph 43(1)(c), other than in relation to registrants and which is not otherwise mentioned in any requirement in subsection 42(3) to be included on the register. Paragraph 43(1)(c) provides that rules can be made for the purposes of the Act prescribing information that must be made publicly available in relation to each person registered in relation to a foreign principal. For example, if the rules made under this paragraph prescribe that details of all payments made by a foreign principal to a registrant must be made publicly available, then this information must also be included on the register.

674. Paragraph 42(3)(c) requires any other information or documents that the Secretary considers appropriate to be included on the register. It is intended that this paragraph will apply to information or documents that do not relate to a person who is registered under the scheme but are relevant to the scheme's management and administration to be kept on the register if the Secretary considers it appropriate. An example of such information is as follows:

Person A person emails the Secretary to provide information about Person B, who Person A suspects is undertaking registrable activities on behalf of foreign principal X. If, upon investigation, scheme officials conclude that Person B may be required to register under the scheme, and Person B does so and information is made available on the register relating to Person B's application, the Secretary may consider it appropriate to also include the email from Person A on the register, subject to privacy considerations.

Section 43 – Certain information to be made publicly available

675. Subsection 43(1) provides that the Secretary must make certain information publicly available in relation to each person registered in relation to a foreign principal. This information must be made available on a website and will include:

- the name of the person and the foreign principal
- a description of the kind of registrable activities the person undertakes on behalf of the foreign principal, and

- any other information prescribed by the rules for the purposes of this paragraph.

676. 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.

677. Paragraphs 43(1)(a) and (b) require that the name of the registrant and the name of the foreign principal on whose behalf they are undertaking activities in Australia be publicly available, as well as a description of the registrable activities that person undertakes on behalf of the foreign principal. This will enable a person to identify whether a particular individual is undertaking activities on behalf of a foreign principal. For example, a Minister may access the website to determine if Person B, a lobbyist requesting a meeting to discuss an imminent policy decision required of the Minister, to determine if Person B is acting on behalf of a foreign principal in undertaking the lobbying activities.

Paragraph 43(1)(c) specifies that any other information must be made publicly available if prescribed by the rules. Section 71 of the Act allows the Minister to make rules prescribing certain matters required or permitted by the Act to be prescribed in rules. As an example, rules could be made for the purposes of paragraph 43(1)(c) requiring that information collected under the scheme relating to the dates on which a person acting on behalf of a foreign government engaged in parliamentary lobbying under section 20 is made publicly available on the website.

Information relating to registrants

678. Subsection 43(1A) provides that, if information that the Secretary is required to make available under subsection 43(1) is provided to the Secretary under section 36 (reporting on registration review when voting period begins) or section 37 (reporting registrable activity during voting periods), the information must be made available within 48 hours of it being provided to the Secretary. This puts an obligation on the Secretary to ensure information is quickly made available to the public via the website where it is provided during a voting period.

679. Subsection 43(1B) provides that other information that the Secretary is required to make available under subsection 43(1) must be made available within four weeks of it being provided to the Secretary. This places an obligation to ensure that information is made available to the public via the website in a timely way. The period is substantially longer than that provided for under subsection 43(1A), because voting periods are a heightened period of political activity and it is more important that information be made available quickly during those periods. At other times, it is important for information to be made available to the public, but not necessary for it to be done with such speed.

680. Subsection 43(1C) provides that the Secretary does not need to comply with new subsections 43(1A) or (1B) if the Secretary is considering whether subsection 43(2) applies to the information. Subsection 43(2) provides that the Secretary must not make information available on the public website if the Secretary is satisfied that the information is

commercially sensitive or affects national security (or is information of a kind prescribed in the rules). It is essential that the Secretary can properly consider whether these matters arise, and to seek appropriate briefing as required to support his or her decision about whether the information must be withheld from the website. If this process takes longer than the relevant periods prescribed in subsections 43(1A) or (1B), then the Secretary will not need to make the information available on the website in accordance with those timeframes.

681. Subsection 43(2) provides that, despite subsection 43(1), the website must not include certain information which the Secretary is satisfied:

- is commercially sensitive
- affects national security, or
- is of a kind prescribed by the rules for the purposes of this subsection.

682. This subsection recognises that it would not be appropriate for some of the information collected by the scheme to be made public or publication would have a detrimental impact, despite falling within subsection 43(1). For example, the website would not be able to include information on the website if it would make available commercially sensitive information containing market sensitive details about a pending transaction, as this may be detrimental for market competition reasons.

683. The term ‘commercially sensitive’ is not defined and will be given its ordinary meaning. It is intended to cover information such as details that are contained in commercial contracts, where if that detail was revealed it would cause detriment to the parties, or would expose sensitive information relating to a company’s operations, expenditure or employees.

684. The term ‘national security’ is not defined and could include matters relating to the protection of Australia and its people from threats and harm, including in relation to espionage, foreign interference, terrorism and political violence. It may also include matters in relation to the defence and protection of the integrity of Australia’s borders as well as information relating to the activities of security intelligence and law enforcement agencies.

685. Paragraph 43(2)(c) provides that the website must not include information that is of a kind prescribed by the rules for the purposes of this subsection. Section 71 of the Act allows the Minister to make rules prescribing certain matters required or permitted by the Act to be prescribed in rules.

686. The Note to paragraph 43(2) clarifies that a registrant who considers information is commercially sensitive information can specify this when giving the information.

Information relating to transparency notices

687. Subsection 43(2A) requires the Secretary to make publicly available on a website the following information in relation to transparency notices:

- each provisional transparency notice issued under section 14B along with

- 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 AAT for review of the decision, and
- if the notice becomes a final transparency notice under subsection 14C(4) – a written statement to that effect
- any variation or revocation 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 AAT for review of the decision.

688. This provision ensures that, when a provisional transparency notice is issued, or a transparency notice is varied or revoked, it will be made publicly available on the scheme's website. Publishing copies of provisional transparency notices, as well as variations and revocations of transparency notices, is important to fulfilling the scheme's transparency objectives.

689. Division 3 into Part 1 of the Act provides that the Secretary may issue a notice, known as a ***transparency notice***, if the Secretary is satisfied that a person is a ***foreign government related entity*** or a ***foreign government related individual***.

690. Subsection 14B(1) provides that, 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 foreign government related individual (as the case requires). The effect of a provisional transparency notice issued under subsection 14B(1) is that a person acting on behalf of a person stated to be a foreign government related entity or a foreign government related individual in a transparency notice may be required to register under the scheme if undertaking activities on behalf of such a person in Australia for the purpose of political or governmental influence.

691. Subsection 14E(1) provides that the Secretary may vary a transparency notice if the Secretary is satisfied that the details in the notice that identify the person as a foreign government related entity or foreign government related individual (as the case requires) should be updated or corrected.

692. Subsection 14E(2) provides that the Secretary must revoke a transparency notice if the Secretary ceases to be satisfied that the person is a foreign government related entity or foreign government related individual (as the case requires).

Removal of information from website

693. Subsection 43(3) allows the rules to prescribe circumstances in which the Secretary is to remove publicly available information from the website. Section 71 of the Act allows the Minister to make rules prescribing certain matters required or permitted by the Act to be prescribed in rules.

Section 44 – Secretary may correct or update information in the register

694. Section 44 enables the Secretary to correct or update information in the register.

695. For example, a person's registration must include the name of the foreign principal for whom the person is undertaking registrable activities. If there is a mistake recording or uploading this information on the scheme's register, the Secretary is able to ensure that this mistake is corrected under section 44.

Division 3—Secretary's powers to obtain information and documents

696. Division 3 of Part 4 outlines the Secretary's powers to obtain information and documents under the scheme. While there are a number of obligations under the scheme for registrants in relation to providing information, there will sometimes be circumstances where the Secretary will require information from a person to make a decision about whether or not a person should register under the scheme or other information relevant to the operation of the scheme. The sections in this Division are intended to empower the Secretary to request such information as is necessary to further the transparency objective of the scheme and ensure its proper administration and functioning.

Section 45 – Notice requiring information to satisfy Secretary whether person is liable to register under the scheme

697. Section 45 enables the Secretary to obtain information to satisfy the Secretary as to whether a person is liable to register under the scheme.

698. Subsection 45(1) provides that the section applies if:

- the Secretary reasonably suspects that a person might be liable to register under the scheme in relation to a foreign principal, and
- the person is not registered under the scheme in relation to that foreign principal.

699. The term 'reasonably suspects' is not defined. A reasonable suspicion falls short of knowledge or belief and is a subjective state of mind. For the suspicion to be reasonable, it will have to have a rational basis. For example, an anonymous tip off from a member of the public that a person is undertaking activities on behalf of a foreign principal, absent any additional corroborating information, may not meet the threshold of reasonable suspicion under section 45. However, if the person has travelled to a particular country, media reports indicate that the person is lobbying the Australian Government and that the person's positions strongly align with stated policies of the relevant country then this may found a reasonable suspicion for the purpose of section 45.

700. Subsection 45(2) specifies that the Secretary may, by notice in writing given to the person, require the person, within a period and in the manner and form specified in the notice:

- give the Secretary any information that may satisfy the Secretary as to whether the person is liable to register in relation to the foreign principal

- produce to the Secretary any documents that may satisfy the Secretary as to whether the person is liable to register in relation to the foreign principal, or
- to make copies of any such documents and produce those copies to the Secretary.

701. It is an offence under section 59 not to comply with a notice given under subsection 45(2). The Note to subsection 45(2) clarifies that this offence applies.

702. The Note also clarifies that any notice given to a person under section 45 does not override the privileges and immunities contained in proposed section 9A, in addition to the existing text which provides that it is an offence not to comply with a notice issued under section 45. Section 9A provides that the scheme does not abrogate parliamentary privilege or legal professional privilege.

703. The term *liable to register* is defined in section 18.

704. Subsection 45(3) provides that the period of time specified in the notice must be a period of at least 14 days after the notice is given. This seeks to afford the person who has received the notice a reasonable amount of time in which to obtain the information or documents and provide them to the Secretary.

705. Subsection 45(4) allows the Secretary to, on request by the person to whom a notice is issued under section 45, extend the period by written notice given to the person. This seeks to ensure flexibility in the operation of section 45 and is intended to apply to circumstances in which the person issued with the notice faces significant or exceptional difficulties in providing the information of documents requested within the 14 day period, or has good reasons for not being able to comply within this time period.

706. Subsection 45(5) provides that before the Secretary issues a notice under subsection 45(2), he or she must have regard to the costs that would be likely be incurred by the person in taking steps to comply with the requirements of the notice. This seeks to ensure that regard is given to the likely financial effect on the person of issuing a notice under subsection 45(2). If the financial effect is likely to be significantly detrimental to the person, the notice could be scoped accordingly to minimise the burden on the person. For example, if the Secretary is requesting all documents a person has in relation the foreign principal, which is likely to be a significant number, the Secretary may limit the types of documents requesting under the notice, so that the person does not expend significant amounts of money obtaining and copying the documents when they are not readily available.

707. Subsection 45(6) provides that subsection 45(5) does not limit the matters to which the Secretary may have regard to for the purposes of issuing a notice under section 45. This ensures that the Secretary is not limited in the scope or type of information or documents that can be requested from a person.

708. Subsection 45(7) provides that a notice given under section 45 must set out:

- the relationship of this Act to the privileges and immunities mentioned in section 9A, and

- 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).

709. Section 9A clarifies that the scheme does not abrogate parliamentary privilege or legal professional privilege. Section 60 of this Act and sections 137.1 and 137.2 of the *Criminal Code* establish offences relating to providing false and misleading information or documents.

710. This amendment seeks to ensure that a person to whom a notice is issued under section 45 is aware of the operation of section 9A, as well as the sections of the Act and the *Criminal Code* which establish offences relating to the provision of false and misleading information or documents. This should have the effect of prompting a person who receives a notice to consider whether any of the information covered by the notice is also subject to parliamentary privilege or legal professional privilege, and therefore not required to be provided to the Secretary consistent with paragraph 9A(3)(b).

711. Subsection 45(8) provides that nothing in section 45 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*.

712. The Secretary's power in section 45 is a standard information gathering provision, consistent with many other provisions in the Commonwealth statute book. The provision is not a process for obtaining evidence of a criminal offence, which would be obtained by the Australian Federal Police using its powers under the *Crimes Act 1914* and elsewhere. This provision is included to avoid doubt, rather than to imply that section 45 can be used to gather evidence of criminal offences other than to the extent excluded by new subsection 45(8).

713. An example of the application of section 45 is as follows:

Person A is undertaking activities on behalf of Country X relating to an upcoming federal election which has not yet been called. Person A is producing pamphlets that advocate for the views of Country X on a major election issue and has met with candidates to lobby on behalf of Country X. Person A receives instructions from Country X in relation to these activities via email and text messages, and receives weekly payments to support these activities. Person A has not registered under the scheme.

If the Secretary reasonably suspects that Person A is liable to register in relation to the activities undertaken on behalf of Country X, the Secretary may issue a notice to Person A seeking information and documents relating to Person A's activities undertaken on behalf of Country X.

Section 46 – Notice requiring information relevant to scheme

714. Section 46 provides that the Secretary may issue a notice to a person requiring that person provide information or a document to the Secretary that is relevant to the operation of the scheme. For the purposes of this section it does not matter whether the person is a registrant of the scheme or not, the Secretary may issue a notice to anyone, regardless of their status.

715. Section 46 has been included to enable the Secretary to obtain all relevant information and documents from any person in relation to the operation of the scheme. This is appropriate, as there will be circumstances where person who is neither registered nor liable to register under the scheme has information or a document relevant to its operation. The provision may also apply where the Secretary has requested information or a document from a person under section 45 and this has not yet been provided.

716. Subsection 46(1) provides that section 46 applies if the Secretary reasonably believes that the person has information or documents that are relevant to the operation of the scheme. The term ‘reasonably believes’ is not defined but is a higher standard than the ‘reasonable suspicion’ that the Secretary must hold under subsection 45(1). The Secretary must believe that the person holds information or documents and this belief must be reasonable and have a rational basis. It is appropriate for this higher standard to apply here because section 46 allows the Secretary to request information from any person, regardless of whether they have any connection to the foreign principal or a registrant.

717. Subsection 46(2) allows the Secretary to, by written notice, require that a person, within a period and in the manner and form specified in the notice:

- give the Secretary any information relevant to the operation of the scheme
- produce to the Secretary any documents relevant to the operation of the scheme, or
- make copies of any such documents and produce those copies to the Secretary.

718. It is an offence under section 59 not to comply with a notice given under subsection 46(2). The Note to subsection 46(2) clarifies that this offence applies. The Note also clarifies that any notice given to a person under section 45 does not override the privileges and immunities contained in proposed section 9A, in addition to the existing text which provides that it is an offence not to comply with a notice issued under section 45. Section 9A provides that the scheme does not abrogate parliamentary privilege or legal professional privilege.

719. Subsection 46(3) provides that the period of time specified in the notice must be a period of at least 14 days after the notice is given. This seeks to afford the person who has received the notice a reasonable amount of time in which to obtain the information or documents and provide them to the Secretary.

720. Subsection 46(4) provides that the Secretary may, on request by the person to whom a notice is issued under section 46, extend the period by written notice given to the person. This seeks to ensure flexibility in the operation of section 46 and is intended to apply to circumstances in which the person issued with the notice faces significant or exceptional difficulties in providing the information or documents requested within the 14 day period, or has good reasons for not being able to meet this time period.

721. Subsection 46(5) provides that before giving a notice under subsection 46(2), the Secretary must have regard to the costs that would likely be incurred by the person in taking steps to comply with the requirements of the notice. This seeks to ensure that regard is given to the likely financial effect on the person of issuing a notice under section 46(2). If the

financial effect is likely to be significantly detrimental to the person, the notice could be scoped accordingly to minimise the burden on the person. For example, if the Secretary is requesting all documents a person relevant to the operation of the scheme, which is likely to be a significant number, the Secretary may limit the types of documents requesting under the notice, so that the person does not expend significant amounts of money obtaining and copying the documents when they are not readily available.

722. Subsection 46(6) provides that subsection 46(5) does not limit the matters to which the Secretary may regard for the purposes of issuing a notice under section 46. This ensures that the Secretary is not limited in the scope or type of information or documents that can be requested from a person.

723. Subsection 46(7) provides that a notice given under section 45 must set out:

- the relationship of this Act to the privileges and immunities mentioned in section 9A, and
- 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).

724. Section 9A clarifies that the scheme does not abrogate parliamentary privilege or legal professional privilege. Section 60 of this Act and sections 137.1 and 137.2 of the Criminal Code establish offences relating to providing false and misleading information or documents.

725. This amendment seeks to ensure that a person to whom a notice is issued under section 46 is aware of the operation of section 9A, as well as the sections of the Act and the Criminal Code which establish offences relating to the provision of false and misleading information or documents. This should have the effect of prompting a person who receives a notice to consider whether any of the information covered by the notice is also subject to parliamentary privilege or legal professional privilege, and therefore not required to be provided to the Secretary consistent with paragraph 9A(3)(b).

726. Subsection 46(8) provides that nothing in section 46 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.

727. The Secretary's power in section 45 is a standard information gathering provision, consistent with many other provisions in the Commonwealth statute book. The provision is not a process for obtaining evidence of a criminal offence, which would be obtained by the Australian Federal Police using its powers under the *Crimes Act 1914* and elsewhere. This provision is included to avoid doubt, rather than to imply that section 45 can be used to gather evidence of criminal offences other than to the extent excluded by new subsection 45(8).

728. An example of the application of section 46 is as follows:

Person A is registered under the scheme as she undertakes political lobbying activities on behalf of Country X. The Secretary has issued a notice under section 46 to Person A, who is reasonably suspected of receiving significantly more funds from Country X

to undertake activities beyond those previously declared. Person A has not responded to the notice under section 46 within the specified timeframe.

Person A has twenty accounts with a banking institution. Under section 46, the Secretary could also give a notice to the banking institution requesting details of Person A's financial transactions in relation to Country X. Given the number of accounts and the large volume of transactions which Person A has with the banking institution, it would be open to the institution to write to the Secretary requesting an extension of the period in which it is required to provide the information or documents to the Secretary.

Section 47 – Self-incrimination

729. Subsection 47(1) provides that a person is not excused from giving information or producing a document or a copy of a document under sections 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.

730. Subsection 47(2) provides that, in the case of an individual, any documents or copies provided, given, produced or obtained as a result of giving or producing information under sections 45 or 46 is not admissible in evidence against the individual in most criminal and civil proceedings.

731. The common law privilege against self-incrimination protects a natural person from complying with a requirement to disclose information or a document under a notice to produce or attend, unless the privilege is expressly or impliedly overridden. This privilege is enshrined in common law in Australia, and provides that a person cannot be required to give information that would tend to incriminate him or herself. However, the privilege against self-incrimination does not apply universally - there are three main circumstances in which it will not apply:

- where it is alleged that a person has provided false or misleading information
- where a person voluntarily provides information or documents, and
- to bodies corporate.

732. The privilege may also be overridden by legislation where there is clear justification for doing so. However, where this is the case, it is usual to include legislative provisions which provide some degree of protection for the rights of individuals. This is consistent with Commonwealth criminal law principles, as described in the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

733. Subsection 47(1) overrides the individual's common law privilege against self-incrimination. This is an appropriate measure, as a fundamental objective of the scheme is to provide transparency for the Australian Government, decision-makers and the public about the forms and sources of foreign influence in Australia, particularly in relation to activities undertaken for the purpose of influencing political and governmental systems and processes. The scheme seeks to achieve this by collecting information on persons undertaking activities on behalf of foreign principals in Australia and making it available to

government and the public, so that they are better able to understand and assess the actions of those registered under the scheme, the foreign principals whose interests they are representing and the types of influence being bought to bear on political and governmental processes. If such information cannot be obtained under the scheme, its effectiveness as a transparency mechanism will be severely compromised.

734. As such, overriding the privilege against self-incrimination in subsection 47(1) is appropriate and supports the scheme's objective of transparency.

735. Subsection 47(2) establishes a use immunity and a derivative use immunity in relation to the person giving the information or producing a document or copy of a document under sections 45 and 46. Use and derivative use immunity clauses establish protections within legislation where a person's privilege against self-incrimination has been removed, as is the case here by virtue of subsection 47(1) by restricting the future uses of information provided.

736. A use immunity clause restricts any self-incriminating information or documents provided by a person from being used in subsequent proceedings against him or her. However, the information or documents can be used to investigate unlawful conduct by that person and third parties.

737. A derivative use immunity clause restricts any self-incriminating information or documents provided by a person from being used to investigate unlawful conduct by him or her. However the information or documents can be used to investigate third parties.

738. Subsection 47(2) provides that information given or the document or copy produced, the giving or producing those items and any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document or copy, will not be admissible in evidence against the individual in criminal and civil proceedings, except for:

- proceedings for an offence against section 60 of this Act, or
- proceedings for an offence against sections 137.1 or 137.2 of the Criminal Code – which establish offences relating to false and misleading information or documents – in relation to this Division.

739. Section 60 establishes an offence for providing false or misleading information or a document to the Secretary under sections 45 and 46. Section 137.1 of the Criminal Code provides that a person commits an offence if the person gives false or misleading information to another person which is a Commonwealth entity. Section 137.2 of the Criminal Code provides that a person commits an offence if the person gives a false or misleading document to another in compliance or purported compliance with a law of the Commonwealth.

740. The Note under subsection 47(2) states that paragraph 47(2)(c) confers a derivative use immunity. It provides an example which states that 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.

741. An example of how section 47 would apply is as follows:

Person A is directed to provide the Secretary copies of records relating to financial transactions between Person A and the foreign principal on whose behalf Person A undertakes activities. The information provided also reveals evidence that Person A has been receiving payment from a third party for an unrelated activity which is illegal. The effect of subsection 47(2) is that the information relating to this illegal activity cannot be used as evidence in criminal proceedings against Person A.

Section 48 – Copies of documents

742. Section 48 provides that the Secretary may inspect a document or copy produced in compliance with a notice under sections 45 or 46, and is able to make a copy of or retain such a document.

743. Section 48 supports the effective and proper administration of the scheme, in circumstances where a person undertakes the technical act of producing a document to the scheme, in compliance with a notice issued by the Secretary.

744. Subsection 48(1) allows the Secretary to inspect and retain a document or copy, and make copies of documents that have been provided in compliance with a notice under sections 45 or 46.

745. The term *inspect* is not defined and will assume its ordinary meaning, which is to look carefully over or at, or to view or examine formally or officially. It is intended to capture a circumstance where a document or copy of a document is provided to the scheme – the contents of the document or copy should be carefully and formally examined by the Secretary or a scheme official.

746. The term *copy* is not defined and will assume its ordinary meaning, which is a reproduction or direct imitation of an original. A true reproduction of an original document, such as a print out of an email or a photocopy of a paper document, would be a copy for the purposes of this section.

747. The term *produce* is not defined and is ordinarily taken to mean to give, to bring forward or to bring into view. It is intended to capture the act of giving or bringing forward a particular document in compliance with the Secretary's notice.

748. Subsection 49(2) provides that the Secretary may retain possession of a copy of a document produced in compliance with a notice given under sections 45 or 46. The term 'retain possession' is not defined and will assume its ordinary meaning, which is to keep or maintain ownership of something.

Section 49 – Retention of documents

749. Subsection 49(1) provides that the Secretary may take, and retain for as long as is necessary, possession of a document produced in compliance with a notice under sections 45 or 46. This enables the Secretary to keep any documents provided under sections 45 or 46 for as long as is necessary. For example, the Secretary could consider it necessary to keep a

document produced in response to a notice under section 45 about whether a person is liable to register while an investigation of whether the person is liable to register is conducted. Subsection 49(1) ensures that the Secretary has access to and can rely on an original document, rather than one that may have been altered or is incomplete.

750. Subsection 49(2) provides that the person who is otherwise entitled to possession of the document is entitled to be supplied with a copy certified by the Secretary to be a true copy. This must be done as soon as practicable. A certified copy of a document is a copy of the primary or original document that has on it an endorsement or certification that it is a true copy of the primary document. This subsection is intended to ensure that a person who has provided a document in compliance a notice under sections 45 or 46 will not be disadvantaged in any way by having provided it to the Secretary, if that person needs to subsequently use the document. An example of this is where a person provides a financial document to the Secretary in compliance with a notice under section 46. This person subsequently needs the document to support an application for a loan – the person is entitled to be supplied with a certified copy of the financial document as soon as possible, if the Secretary has decided it necessary to retain the document.

751. Subsection 49(3) provides that a certified copy:

- 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
- in any case – must be received in all courts and tribunals as evidence as if it were the original.

752. Paragraph 49(3)(a) allows the Secretary to make a certified true copy of a document that is provided, if the Secretary returns the original document to the person who provided it. The Secretary may decide to do this if the person has an immediate or ongoing requirement to use the original document. An example of this is where a person provides his or her passport to the Secretary in compliance with a notice under section 45. This person subsequently needs to use the passport for overseas travel – the Secretary may make a certified copy of the person's passport and return the original passport to the person.

753. Paragraph 49(3)(b) provides that, a certified copy must be received in all courts and tribunals as if it were the original. An example of this is where a person provides original documents detailing his or her financial position to the Secretary in compliance with a notice issued under section 45. The person is provided with certified copies of the documents as the Secretary decides to retain possession of the originals. That person subsequently files for bankruptcy, and is required to tender the original documents provided to the Secretary in court. In this instance, the court is required to accept the certified copies as evidence in the bankruptcy proceedings.

754. Subsection 49(4) provides that until a certified copy is supplied to the person entitled to possess the document, the Secretary must permit that person, or a person authorised by the person, to inspect and make copies of the document. Access to inspect and copy the document is required under subsection 49(1) at such times and places that are considered appropriate by the Secretary.

Division 4—Disclosure and use of scheme information

755. Division 4 of Part 4 outlines the circumstances in which scheme information may be used or disclosed. The provisions in this Division provide a mechanism for protecting scheme information by specifying the purposes for which that information may be disclosed, and to which types of organisations and/or bodies.

Section 50 – Scheme information

756. This section defines what information will be categorised as scheme information.

757. Information becomes *scheme information* in two ways:

- under paragraph 50(a), information is scheme information if it is obtained by a scheme official in the course of performing functions or exercising powers under the scheme.
- under paragraph 50(b), information is scheme information if it was information to which subsection 50(a) applied and was obtained by a person by way of a disclosure authorised under Division 4.

758. Under section 51, the following people are *scheme officials*:

- the Secretary
- an APS employee in the Department to whom a function or power is delegated under section 67 or whose functions otherwise include functions in relation to the scheme, or
- any other person who performs functions in relation to the scheme under an agreement with the Commonwealth.

759. Paragraph 50(a) ensures that information obtained by a scheme official in the course of performing functions or exercising powers under the scheme is protected and can only be used or disclosed for particular, limited purposes. This will include information that a person voluntarily provides to a scheme official as well as information obtained through the exercise of powers related to the scheme.

760. Subsection 50(b) ensures that information obtained by a scheme official in the course of performing functions or exercising powers under the scheme that is obtained by another person by way of a disclosure authorised under Division 4 is also protected as *scheme information*. For example, where a person obtains information in the course of performing functions or exercising powers under the scheme (fulfilling the definition of scheme information in subsection 50(a)) and discloses that information to Person A in accordance with the authorised disclosure provisions in Division 4, Person A is now in receipt of scheme information and subject to the protections that attach to scheme information.

Section 51 – Scheme officials

761. Section 51 defines *scheme officials*. A scheme official will be any one of the following:

- the Secretary
- an APS employee in the Department:
 - to whom a function or power of the scheme is delegated to under section 67, or
 - whose functions will otherwise include functions in relation to the scheme
- any other person who performs functions in relation to the scheme under an arrangement with the Commonwealth.

762. Section 10 defines *Secretary* as the Secretary of the Department.

763. *APS employee* means a person who is engaged as an employee of the Australian Public Service in the Department with responsibility for the administration of the scheme under the *Public Service Act 1999*. Paragraph 51(b) will apply to an APS employee who has been properly delegated a particular power or function under the scheme or where that APS employee's functions would otherwise include functions in relation to the scheme.

764. Paragraph 51(c) will cover any other person who performs functions in relation to the scheme under an arrangement with the Commonwealth. This provision is intended to cover other categories of people who may undertake functions in relation to the scheme and would otherwise be a scheme official but for the fact they are not APS employees. Paragraph 51(c) would capture, for example, a person who performs functions under the scheme under a contract with the Department administering the scheme.

Section 52 – Authorisation—purposes of scheme

765. This section provides an authorisation for a scheme official to disclose or use scheme information where the disclosure or use is for the purposes of performing functions or exercising powers under the scheme, or occurs otherwise in the course of performing the scheme official's functions in relation to the scheme.

766. This provision is intended to ensure that scheme information can be disclosed or used for the effective running and administration of the scheme, and that a scheme official cannot be prosecuted for an offence merely for undertaking their official duties.

Section 53 – Authorisation—other purposes

767. This section provides an authorisation for the Secretary to disclose scheme information for a range of specified purposes and to a person specified for that purpose in the table in that paragraph. Authorisation under this paragraph is limited to the Secretary, providing a further protection for scheme information in that only the Secretary or a scheme

official at the Senior Executive Service level who has been delegated specific responsibility for disclosing information under this section is actually able to disclose the information. This delegation power is found under section 67.

768. Item one of the table provides an authorisation for the Secretary to disclose scheme information for the purpose of an enforcement related activity of an enforcement body within the meaning of the *Privacy Act 1988*.

769. Section 6 of the Privacy Act defines enforcement body to mean the following:

- the AFP
- the Integrity Commissioner
- the ACC
- the Immigration Department
- the Australian Prudential Regulation Authority
- the Australian Securities and Investments Commission
- the Office of the Director of Public Prosecutions, or a similar body established under a law of a State or Territory
- another agency, to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law
- another agency, to the extent that it is responsible for administering a law relating to the protection of the public revenue
- a police force or service of a State or a Territory
- the New South Wales Crime Commission
- the Independent Commission Against Corruption of New South Wales
- the Law Enforcement Conduct Commission of New South Wales
- the Independent Broad-based Anti-corruption Commission of Victoria
- the Crime and Corruption Commission of Queensland
- the Corruption and Crime Commission of Western Australia
- the Independent Commissioner Against Corruption of South Australia
- another prescribed authority or body that is established under a law of a State or Territory to conduct criminal investigations or inquiries

- a State or Territory authority, to the extent that it is responsible for administering, or performing a function under, a law that imposes a penalty or sanction or a prescribed law, or
- a State or Territory authority, to the extent that it is responsible for administering a law relating to the protection of the public revenue.

770. An enforcement related activity is also defined in section 6 of the Privacy Act to mean:

- the prevention, detection, investigation, prosecution or punishment of criminal offences, or breaches of a law imposing a penalty or sanction
- the conduct of surveillance activities, intelligence gathering activities or monitoring activities
- the conduct of protective or custodial activities
- the enforcement of laws relating to the confiscation of the proceeds of crime
- the protection of public revenue
- the prevention, detection, investigation and remedying of misconduct of a serious nature, or other conduct prescribed by the regulations, or
- the preparation for, or conduct of, proceedings before any court or tribunal, or the implementation of court/tribunal orders.

771. This authorisation in item one enables enforcement agencies to use scheme information for investigations and prosecutions.

772. Item two of the table provides an authorisation for the Secretary to disclose scheme information for the purpose of protecting public revenue. The information may only be disclosed to a Department, agency or authority of the Commonwealth, a State or a Territory, or an Australian police force if one of those entities has functions in relation to the protection of public revenue.

773. The term ‘public revenue’ is not defined and will be given its ordinary meaning. It is intended that this term will cover the income of government that is raised through all sources.

774. This authorisation in item two enables those agencies who undertake duties relating to the protection of public revenue to use scheme information in their investigations and prosecutions. The scope of item two has been kept narrow and will only apply where the disclosure is specifically for the protection of public revenue. It is intended that where scheme information is requested for this purpose, the requesting agency will be required to justify how this information relates to the protection of public revenue.

775. Item three of the table provides an authorisation for the Secretary to disclose scheme information for the purpose of the protection of security within the meaning of the *Australian Security Intelligence Organisation Act 1979*. The information may only be disclosed to a

Department, agency or authority of the Commonwealth, a State or a Territory, or an Australian police force if one of those entities has functions in relation to the protection of security.

776. Section 4 of the ASIO Act defines security as follows:

- the protection of, and of the people of, the Commonwealth and the several States and Territories from:
 - espionage
 - sabotage
 - politically motivated violence
 - promotion of communal violence
 - attacks on Australia's defence system, or
 - acts of foreign interference

whether directed from, or committed within, Australia or not

- the protection of Australia's territorial and border integrity from serious threats, and
- the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (b).

777. The authorisation in item three enables the agencies who undertake duties relating to the protection of security to use scheme information to contribute to, or enhance their operational capability. In some circumstances, scheme information may assist these agencies with their ongoing or complex investigations. For example, ASIO may be investigating a suspected act of foreign interference, where Country X has directed Person A to lobby the Australian Government on its climate change policy. ASIO can make a request to the Secretary under section 53, requesting information collected under the scheme about Person A, whether they have registered under the scheme and details about his or her registration.

778. The scope of item three has been kept narrow and will only apply where the disclosure is specifically for the protection of security. It is intended that where scheme information is requested for this purpose, the requesting agency will have to be specific about the information it is requesting and justify how this information relates to the protection of security as defined in the ASIO Act.

779. Item four of the table provides an authorisation for the Secretary to disclose scheme information to a person prescribed by the rules and for a purpose prescribed by the rules. Section 71 of the Act allows the Minister to make rules prescribing certain matters by way of legislative instrument. Rules may only relate to matters that are required or permitted by the

Act, or matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

780. It is possible that there may be additional purposes for which or persons to whom scheme information may need to be disclosed once the scheme is established, beyond those purposes already prescribed in section 53. In these circumstances, the Minister may prescribe these additional purposes and/or persons in rules made under section 71. It is intended that any additional purposes and/or persons prescribed in rules would be kept narrow and that any request for scheme information under item four would need to justify how the information relates to the purpose as prescribed in the rules.

781. An example of when a rule under item four of subsection 53(1) might be made is where a Commonwealth agency identifies a need to access scheme information in order to carry out its functions. Depending on the information sought and the purpose for seeking that information, it might fall outside the criteria for sharing scheme information as set out at items one-three of subsection 53(1). In such a situation, the Commonwealth agency might make a request that it be prescribed as an agency with which the Secretary may share scheme information, to support the agency in fulfilling its functions. The Minister may then consider making a rule in accordance with item four of subsection 53(1). This would only be done in consultation with the Information Commissioner, as required by subsection 53(2).

782. Any rules made in accordance with subsection 53(1) will be legislative instruments under the Legislation Act 2003 and would be subject to the normal disallowance processes under that Act. Any rules will also comply with the Privacy Act 1988, and will be guided by the Australian Privacy Principles.

783. Subsection 53(3) provides that the PJCIS must:

- review rules made for the purposes of Item 4 of the table in subsection 53(1) as soon as possible after the rules are made, and
- report the PJCIS's comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.

784. Subsection 53(4) provides that, if the PJCIS's report on a review of the rules is tabled in a House of the Parliament during the applicable disallowance period for that House and 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 table in the subsection. The term 'applicable disallowance period' is defined in subsection 53(5).

785. Subsection 53(5) provides that the term ***applicable disallowance period*** for a House of Parliament means the period of 15 sitting days of that House after the rules, or a copy of the rules, was laid before that House in accordance with section 38 of the *Legislation Act 2003*. Section 38 of the Legislation Act requires the Office of Parliamentary Counsel to arrange for a copy of each registered legislative instrument to be delivered to each House of the Parliament to be laid before each House within six sitting days of that House after the registration of the instrument.

Section 54 – Authorisation—secondary disclosure and use

786. Section 54 provides that a person is authorised to communicate or otherwise deal with scheme information if:

- the person obtains the information in his or her capacity as a person, or as an employee or official of a person, to whom information is communicated under this Division, and
- 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 disclosed.

787. This provision is intended to ensure that a person who obtains scheme information by way of an authorised communication, is able to make a secondary disclosure or use the scheme information without breaching the protection of information provision in section 53.

788. For this authorisation to apply the person must have obtained the scheme information by way of an authorised disclosure – that is, that the person must have received the information in an official capacity and the person must only disclose or use that information for the purpose for which the information was obtained. For example, Person A is employed by the New South Wales Police Force and has been provided scheme information by the Secretary for the purposes of undertaking a law enforcement activity. Person A then discloses that information to colleagues for the purpose of the law enforcement activity being undertaken by that agency. The secondary disclosure made by Person A to Person B is authorised under section 54 as Person A has received the information for a law enforcement purpose and then communicated it to Person B for the same purpose.

Section 55 – Authorisation—information publicly available

789. Section 55 provides that a person is authorised to 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 sections 43 or 69 of the Act.

790. Section 43 outlines certain information that the Secretary must make available to the public in relation to each person registered under the scheme. Section 69 provides that the Secretary must prepare an annual report to give to the Minister containing information on the operation of the scheme in relation to the financial year.

791. By virtue of sections 43 and 69, certain scheme information has already been made public. Section 55 is intended to make it abundantly clear that a person may disclose or use such scheme information.

Part 5—Enforcement

Section 56 - Simplified outline of this Part

792. Section 56 sets out a simplified outline of this Part. The section provides that it is a criminal offence for a person who is liable to register not to be registered under the scheme. Section 56 also notes that criminal offences apply for:

- undertaking registrable activities while not being registered
- failing to fulfil other responsibilities under the scheme, and
- providing false or misleading information or destroying records in connection with the scheme.

793. Simplified outlines are included to assist readers to understand the substantive provisions. However, the outlines are not intended to be comprehensive and it is intended that the readers should rely on the substantive provisions.

Section 57 – Failure to apply for or renew registration

794. Section 57 establishes a number of tiered criminal offences for failure to apply for or renew registration. The offences are:

- intentional omission to apply or renew knowing required to do so, and registrable activity undertaken (subsection 57(1))
- international omission to apply or renew reckless as to whether required to do so, and registrable activity undertaken (subsection 57(2))
- reckless omission to apply or renew knowing required to do so, and registrable activity undertaken (subsection 57(3))
- reckless omission to apply or renew reckless as to whether required to do so, and registrable activity undertaken (subsection 57(3A)), and
- reckless omission to apply or renew knowing required to do so, whether or not registrable activity undertaken (subsection 57(4)).

795. The penalties for these offences range from 12 months (for the offence at subsection 57(4)) to five years imprisonment (for the offence at subsection 57(1)). The maximum penalties have been set in accordance with the principles set out in the Guide to Framing Commonwealth Offences, including that:

- penalties have a single maximum penalty that is adequate to deter and punish a worst case offence, and
- penalties are set consistent with penalties for existing offences of a similar kind or of a similar level of seriousness.

796. The penalties in subsections 57(1) – (4) contain single maximum penalties consistent with the Guide and are adequate to respond to the ‘worst case’ conduct that is punishable under section 57. The penalties in section 57 are intended to address the most serious of conduct, intentionally committed in contravention of requirements under the Scheme, and recognise the high level of culpability of the offender.

797. In setting the penalties for the offences in section 57 of the Bill, consideration was given to the level of harm to Australia and Australia’s political and governmental processes that may result from a person or entity failing to apply for, or maintain, registration under the scheme. As an example, significant adverse consequences meriting a substantial term of imprisonment could flow from a deliberate failure to register an arrangement with a foreign principal to undertake public relations and communications activities on their behalf. An arrangement stipulating that the activities are to commence when a federal election is called, and to target a vulnerable sector of the community in marginal electorates where it is likely that voters will change their vote if influenced by the activities, could have an appreciable impact on the outcome of a democratic process. A five year penalty is appropriate when the person knows they are required to register but does not do so and undertakes the activities. Failure to register deprives the public of the opportunity to know the foreign influence being brought to bear in respect of their vote in the federal election. The maximum penalties in section 57 seek to deter such serious conduct.

798. Consideration was also given to the penalties for offences that support the United States’ (US) equivalent scheme, established under the *Foreign Agents Registration Act 1938*. Section 951 of the US Code (agents of foreign governments) attracts a maximum penalty of ten years imprisonment.

799. The US offence applies where a person acts as an agent of a foreign government in the US without prior notification to the Attorney-General, other than a diplomatic or consular officer. The types of activities that constitute ‘acting as an agent of a foreign government’ are not defined except that they must be undertaken at ‘the direction or control of a foreign government or official’. The US offence requires that a person intentionally acts on behalf of a foreign principal without prior notification and could apply to the same activities that are considered registrable activities in sections 20 – 23 of the Bill. The offence at section 57 applies where a person deliberately fails to register under the Scheme and goes on to engage in registrable activities. This conduct is equivalent to acting as a foreign agent and would constitute an offence under section 951 of the US Code.

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

800. Subsection 57(1) will make it an offence for a person to omit to apply for registration or renew their registration, with the knowledge that they are required to do so, and the person undertakes a registrable activity on behalf of a foreign principal.

801. The offence will be punishable by a maximum penalty of seven years imprisonment.

802. An example of this offence is as follows. Person A is engaged by a foreign government to lobby members of Parliament on Australian Government policy on foreign direct investment. The Australian Government has publicly dismissed the foreign government’s views as uninformed and Person A wants to hide the connection to the foreign

government so as to have a fresh opportunity to convince the Australian Government of the foreign government's position. Person A knows that they are required to register with the scheme on entering into an arrangement with the foreign government and prior to undertaking activities on behalf of the foreign government. Despite knowing their registration obligations, Person A intentionally decides not to register with the scheme and undertakes the lobbying activities on behalf of the foreign government.

803. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person is:
 - required to apply for registration under the scheme in relation to a foreign principal by the end of a period and the person knows this, or
 - required to renew their registration under the scheme in relation to the foreign principal by the end of a period and the person knows this
- the person intentionally omits to apply for registration or renew his or her registration
- the person intentionally undertakes an activity on behalf of the foreign principal, and
- the activity is registrable in relation to the foreign principal and the person is reckless as to this element.

804. Paragraph 57(1)(a) specifies that a fault element of knowledge will apply. Under section 5.3 of the Criminal Code, a person has knowledge of a circumstance if he or she is aware that it exists or which will exist in the ordinary course of events.

805. Intention is the fault element for paragraphs 57(1)(b) and (c). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

806. Recklessness is the fault element for paragraph 57(1)(d). Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

807. For paragraph 57(1)(a) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant was required to:

- apply to register under the scheme in relation to the foreign principal by the end of a period, or
- renew his or her registration in relation to the foreign principal by the end of a period.

808. The prosecution will also have to prove that the person knew about the requirement applying to them in relation to registration or renewal of registration.

809. The term ***person*** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

810. The term ***foreign principal*** is defined in section 10 to mean:

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

811. The term ***scheme*** is also defined in section 10 to mean this Act and the rules prescribed under section 71.

812. The terms *apply for registration* and *end of a period* are not defined and are intended to take their ordinary meanings.

- *Apply for registration* is intended to include completing and submitting the required documentation in compliance with the scheme.

- *End of a period* is intended to mean at the conclusion of a set amount of time during which a person is required to register or renew their registration. For example, section 16 specifies that a person who becomes liable to register under the scheme, must apply for registration with 14 days. For section 16, the term ‘end of a period’ would refer to the conclusion of the 14 day period that a person has to apply to register with the scheme.

813. For paragraph 57(1)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant intentionally omitted to apply for registration under the scheme or to renew the person’s registration.

814. For paragraph 57(1)(c) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant intentionally undertook an activity on behalf of the foreign principal after the end of the period. The term *activity* is not defined and is intended to refer to a thing that a person does or has done and could include an undertaking, pursuit, occupation, project or task. It is intended to include both a single activity and plural ‘activities.’

815. Section 11 defines *on behalf of* for the purposes of the scheme. Section 11(1) provides that a person undertakes an activity *on behalf of* a foreign principal if:

- the person undertakes the activity in any of the following circumstances:
 - under an arrangement with the foreign principal
 - in the service of the foreign principal
 - on the order or at the request of the foreign principal
 - under the direction of the foreign principal, and
- 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:
 - the person would or might undertake the activity, and
 - 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).

816. For paragraph 57(1)(d) of the offence, the prosecution will have to prove beyond a reasonable doubt that the activity referred to in paragraph 57(1)(c) is registrable in relation to the foreign principal. An activity is a registrable activity if it falls within Division 3 of Part 2 of the Act.

817. Recklessness is the fault element for this element of the offence. Therefore, the person will have to have been aware of a substantial risk that the activity is registrable in relation to the foreign principal and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

818. The penalty for this offence is five years imprisonment. This is appropriate given the significant consequences that can flow from hidden foreign influence on Australia’s political

and governmental processes and the high level of culpability of the offender. The penalty is consistent with comparable offences that relate to conduct that negatively affects Australia's political and governmental processes, including the offence at section 951 of the United States Code (agents of foreign governments) which attracts a maximum penalty of 10 years imprisonment. The penalty recognises the serious implications that unchecked and unknown forms and sources of foreign influence can have on Australia's democratic system of government.

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

819. Subsection 57(2) makes it an offence for a person to intentionally omit to apply for registration or renew their registration, reckless as to whether they are required to do so, and the person undertakes a registrable activity on behalf of a foreign principal.

820. The offence will be punishable by a maximum penalty of three years imprisonment.

821. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person is:
 - required to apply for registration under the scheme in relation to a foreign principal by the end of a period and the person is reckless as to this, or
 - required to renew their registration under the scheme in relation to a foreign principal by the end of a period and the person is reckless as to this
- the person intentionally omits to apply for registration or renew his or her registration
- the person intentionally undertakes an activity on behalf of the foreign principal after the end of the period, and
- the activity is registrable in relation to the foreign principal and the person is reckless as to this element.

822. Recklessness is the fault element for paragraphs 57(2)(a) and (d). Section 5.4 of the Criminal Code provides that a person is reckless with respect to a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

823. Intention is the fault element for paragraphs 57(2)(b) and (c). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

824. For paragraph 57(2)(a) of the offence, the prosecution will have to prove beyond a reasonable doubt that the person was required to:

- apply to register under the scheme in relation to the foreign principal by the end of a period, or
- renew his or her registration in relation to the foreign principal by the end of a period.

825. The prosecution will also have to prove that the person was reckless as to the requirement applying to them in relation to registration or renewal of registration.

826. The term ***person*** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

827. The term ***foreign principal*** in section 10 to mean:

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

828. The term ***scheme*** is also defined in section 10 to mean this Act and the rules made under section 71.

829. The terms apply for registration and end of a period are not defined and are intended to take their ordinary meanings.

- *Apply for registration* is intended to include completing and submitting the required documentation in compliance with the scheme.

- *End of a period* is intended to mean at the conclusion of a set amount of time during which a person is required to register or renew their registration. For example, section 16 specifies that a person who becomes liable to register under the scheme must apply for registration with 14 days. For section 16, the term ‘end of a period’ would refer to the conclusion of the 14 day period that a person has to apply to register with the scheme.

830. For paragraph 57(2)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant intentionally omitted to apply for registration under the scheme or to renew the person’s registration.

831. For paragraph 52(2)(c) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant intentionally undertook an activity on behalf of the foreign principal after the end of the period.

832. For paragraph 57(2)(d) of the offence, the prosecution will have to prove beyond a reasonable doubt that the activity referred to in paragraph 57(2)(c) is registrable in relation to the foreign principal. An activity is a registrable activity if it falls within Division 3 of Part 2 of the Act. Recklessness is the fault element for this element of the offence. Therefore, the person will have to have been aware of a substantial risk that the activity is registrable in relation to the foreign principal and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

833. The penalty for this offence is three years imprisonment. This is appropriate given the serious consequences that can flow from hidden foreign influence on Australia’s political and governmental processes. It recognises, however, the level of culpability of the offender is less than were the person knows that they are required to register or renew their registration, as is required in the offence in proposed subsection 57(1). This amendment implements Recommendation 45 of the PJCIS report.

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

834. Subsection 57(3) will make it an offence for a person to omit to apply for registration or renew their registration, with the knowledge that they are required to do so, and the person undertakes a registrable activity on behalf of a foreign principal.

835. The offence will be punishable by a maximum penalty of three years imprisonment.

836. An example of this offence is as follows. On 20 January 2020, Person D enters into a registrable arrangement with a foreign government related entity to lobby members of the Parliament on a Bill on which there is soon to be a vote. Person D registers under the scheme on 5 February 2020 and undertakes activities on behalf of the foreign government related entity. Person D knows that they are required to renew their registration sometime towards the start of 2021 and that they will continue to undertake activities on behalf of the foreign government related entity. However, Person D does not check the date for registration renewal and fails to renew his or her registration by 4 March 2021 as is required under the scheme. In the period after Person’s D registration has lapsed, Person D continues to lobby members of the Parliament on behalf of the foreign public enterprise.

837. To establish this offence, prosecution will need to prove, beyond a reasonable doubt, that:

- the person is:
 - required to apply for registration under the scheme in relation to a foreign principal by the end of a period and the person knows this, or
 - required to renew their registration under the scheme in relation to a foreign principal by the end of a period and the persons knows this
- the person is reckless as to whether the person has omitted to apply for registration or renew his or her registration
- the person intentionally undertakes an activity on behalf of the foreign principal
- the activity is registrable in relation to the foreign principal and the person is reckless as to this element.

838. Paragraph 57(3)(a) specifies that a fault element of knowledge will apply. Under section 5.3 of the Criminal Code, a person has knowledge of a circumstance if he or she is aware that it exists or that it will exist in the ordinary course of events.

839. Recklessness is the fault for paragraphs 57(3)(b) and (d). Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

840. Intention is the fault element for paragraph 57(3)(c). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

841. For paragraph 57(3)(a) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant was required to:

- apply to register under the scheme in relation to the foreign principal by the end of a period, or
- renew the person's registration in relation to the foreign principal by the end of a period.

842. The prosecution will also have to prove that the person knew about the requirement applying to them in relation to registration or renewal of registration.

843. The term ***person*** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

844. The term ***foreign principal*** is defined in section 10 to mean:

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

845. The term ***scheme*** is defined at section 10 to mean this Act and the rules prescribed under section 71..

846. The terms *apply for registration* and *end of a period* are not defined and are intended to take their ordinary meanings.

- *Apply for registration* is intended to include completing and submitting the required documentation in compliance with the scheme.
- *End of a period* is intended to mean at the conclusion of a set amount of time during which a person is required to register or renew their registration. For example, section 17 specifies that a person who becomes liable to register under the scheme, must apply for registration with 14 days. For section 17, the term ‘end of a period’ would refer to the conclusion of the 14 day period that a person has to apply to register with the scheme.

847. For paragraph 57(3)(b), the prosecution will have to prove beyond a reasonable doubt that the defendant was reckless as to whether he or she had:

- applied for registration under the scheme in relation to the foreign principal by the end of a period, or
- renewed registration in relation to the foreign principal by the end of a period.

848. As recklessness is the fault element for this element, the person will have to be aware of a substantial risk that he or she has not applied for registration by the end of a period or renewed registration by the end of a period and, having regard to the circumstances known to him or her, it is unjustifiable to take this risk.

849. For paragraph 57(3)(c), the prosecution will have to prove beyond a reasonable doubt that the defendant intentionally undertook an activity on behalf of the foreign principal after the end of the period. The term *activity* is not defined and is intended to refer to a thing that a person does or has done and could include an undertaking, pursuit, occupation, project or task. It is intended to include both a single activity and plural ‘activities.’

850. Section 11 defines *on behalf of* for the purposes of the scheme. Section 11(1) provides that a person undertakes an activity *on behalf of* a foreign principal if:

- the person undertakes the activity in any of the following circumstances:
 - under an arrangement with the foreign principal
 - in the service of the foreign principal
 - on the order or at the request of the foreign principal
 - under the direction of the foreign principal, and
- 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:
 - the person would or might undertake the activity, and
 - 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).

851. For paragraph 57(3)(d) of the offence, the prosecution will have to prove beyond a reasonable doubt that the activity referred to in paragraph 57(3)(c) is registrable in relation to the foreign principal. An activity is a registrable activity if it falls within Division 3 of Part 2 of the Act.

852. Recklessness is the fault element for this element of the offence. Therefore, the person will have to have been aware of a substantial risk that the activity is registrable in relation to the foreign principal and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

853. The penalty for this offence is three years imprisonment. The penalty recognises the serious implications that unchecked and unknown forms and sources of foreign influence can have on Australia’s democratic system of government. The penalty appropriately reflects the

lower level of culpability required to establish this offence when compared to subsection 57(1).

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

854. Subsection 57(3A) will make it an offence for a person to recklessly omit to apply or renew their registration under the scheme, reckless as to whether they are required to do so, and the person undertakes a registrable activity on behalf of a foreign principal.

855. The offence will be punishable by a maximum penalty of two years imprisonment.

856. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person is:
 - required to apply for registration under the scheme in relation to a foreign principal by the end of a period and the person is reckless as to this, or
 - required to renew their registration under the scheme in relation to a foreign principal by the end of a period and the person is reckless as to this
- the person is reckless as to whether he or she has omitted to apply for registration or renew his or her registration
- the person intentionally undertakes an activity on behalf of the foreign principal after the end of the period, and
- the activity is registrable in relation to the foreign principal and the person is reckless as to this element.

857. Recklessness is the fault element for paragraphs 57(3A)(a), (b) and (d). Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

858. Intention is the fault element for paragraph 57(3A)(c). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

859. For paragraph 57(3A)(a) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant was required to:

- apply to register under the scheme in relation to the foreign principal by the end of a period, or
- renew his or her registration in relation to the foreign principal by the end of a period.

860. The prosecution will also have to prove that the person was reckless as to the requirement applying to them in relation to registration or renewal of registration.

861. The term *person* is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

862. The term *foreign principal* in proposed section 10 means:

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

863. The term *scheme* is also defined in section 10 to mean this Act and the rules made under section 71.

864. The terms apply for registration and end of a period are not defined and are intended to take their ordinary meanings.

- *Apply for registration* is intended to include completing and submitting the required documentation in compliance with the scheme.
- *End of a period* is intended to mean at the conclusion of a set amount of time during which a person is required to register or renew their registration. For example, section 16 specifies that a person who becomes liable to register under the scheme must apply for registration with 14 days. For section 16, the term ‘end of a period’ would refer to the conclusion of the 14 day period that a person has to apply to register with the scheme.

865. For paragraph 57(3A)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant was reckless as to whether they omitted to apply for registration under the scheme or to renew the person’s registration.

866. For paragraph 57(3A)(c) of the offence, the prosecution will have to prove beyond a reasonable doubt that the person intentionally undertook an activity on behalf of the foreign principal after the end of the period.

867. For paragraph 57(3A)(d) of the offence, the prosecution will have to prove beyond a reasonable doubt that the activity referred to in paragraph 57(3A)(c) is registrable in relation to the foreign principal. An activity is a registrable activity if it falls within Division 3 of Part 2 of the Act. Recklessness is the fault element for this element of the offence. Therefore, the person will have to have been aware of a substantial risk that the activity is registrable in relation to the foreign principal and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

868. The penalty for this offence is two years imprisonment, and is consistent with the tiered offence structure for the section 57 offences. This is appropriate given the serious consequences that can flow from hidden foreign influence on Australia’s political and governmental processes. It recognises, however, the level of culpability of the offender is less than were the person knows that they are required to register or renew their registration and intentionally omits to do so, which warrants the higher penalty in proposed subsection 57(1).

Reckless omission to apply or renew knowing required to do so, whether or not registrable activity undertaken

869. Subsection 57(4) will make it an offence for a person to be reckless as to whether he or she has omitted to apply for registration or renew their registration.

870. This offence will be punishable by a maximum penalty of 12 months imprisonment.

871. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person is:
 - required to apply for registration under the scheme in relation to a foreign principal by the end of a period and the person knows this, or

- required to renew his or her registration under the scheme in relation to the foreign principal by the end of a period and the person knows this, and
- the person is reckless to whether he or she has omitted to apply for registration or renew their registration.

872. Paragraph 57(4)(a) specifies that the fault element of knowledge will apply. Under section 5.3 of the Criminal Code, a person has knowledge of a circumstance if he or she is aware that it exists or which will exist in the ordinary course of events.

873. Paragraph 57(4)(b) specifies that recklessness is the fault element. Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

874. For paragraph 57(4)(a) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant was required to:

- apply to register under the scheme in relation to the foreign principal by the end of a period, or
- renew their registration in relation to the foreign principal by the end of a period.

875. The prosecution will also have to prove that the person knew about the requirement applying to them in relation to registration or renewal of registration.

876. The term **person** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

877. The term *foreign principal* is defined in section 10 to mean:

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

878. The term *scheme* is also defined in section 10 to mean this Act and the rules prescribed under section 71.

879. The terms *apply for registration* and *end of a period* are not defined and are intended to take their ordinary meanings.

- *Apply for registration* is intended to include completing and submitting the required documentation in compliance with the scheme.
- *End of a period* is intended to mean at the conclusion of a set amount of time during which a person is required to register or renew their registration. For example, section 17 specifies that a person who becomes liable to register under the scheme, must apply for registration with 14 days. For section 17, the term ‘end of a period’ would refer to the conclusion of the 14 day period that a person has to apply to register with the scheme.

880. For paragraph 57(41)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant was reckless as to whether he or she omitted to apply for registration under the scheme or to renew the person’s registration. The person will have to be aware of a substantial risk that he or she has omitted to apply for registration or to renew his or her registration and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

881. The penalty for this offence is 12 months imprisonment. This lower penalty reflects the fact that the person has not yet undertaken activities on behalf of the foreign principal. As such, the potential for the foreign influence to affect political or governmental processes is relatively low. However, it is important to criminalise this type of behaviour, as it undermines the transparency objective of the scheme and also provide an incentive to register or renew registrations under the scheme.

Section 57A – Giving notice of end of liability to register while still liable to register

882. Section 57A contains offences for a person who gives notice under section 31 of the end of liability to register under the scheme, but at that time a registrable arrangement continues to exist between the person and a foreign principal.

Notice given knowing arrangement still exists, and registrable activity undertaken

883. Subsection 57A(1) makes it an offence for a person to give the Secretary a notice under section 31 indicating they are no longer liable to register under the scheme, knowing that there is a registrable arrangement in existence between the person and a foreign principal, and the person undertakes a registrable activity on behalf of the foreign principal.

884. The offence will be punishable by a maximum penalty of five years imprisonment.

885. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person intentionally gave a notice under section 31 in relation to end of liability to register in relation to a foreign principal
- at the time the person issued the notice a registrable arrangement exists between the person and the foreign principal and the person is reckless as to this
- a registrable arrangement will still be in existence on the day specified in the notice under section 31 as the day the person's registration is to cease and the person knows this
- the person intentionally undertakes an activity on behalf of the foreign principal after that day, and
- the activity is registrable in relation to the foreign principal and the person is reckless as to this element.

886. Intention is the fault element for paragraphs 57A(1)(a) and (d). Under section 5.2 of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

887. Recklessness is the fault element for paragraphs 57A(1)(b) and (e). Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur, and having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

888. Paragraph 57A(1)(c) specifies that a fault element of knowledge will apply. Under section 5.3 of the Criminal Code, a person has knowledge of a circumstance if he or she is aware that it exists or will exist in the ordinary course of events.

889. For paragraph 57A(1)(a) of the offence, the prosecution will have to prove, beyond a reasonable doubt, that the person gave the Secretary a notice under section 31 for the person's

registration under the scheme in relation to the foreign principal. The prosecution will also have to prove that the person intended to issue the notice in relation to the end of registration.

890. The term *person* is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

891. The term *Secretary* is defined at section 10 to mean the Secretary of the Department. This will be the Secretary of the Department that has responsibility for administering the scheme.

892. Section 31 provides that a registrant may give a notice to the Secretary that they have ceased to undertake activities on behalf of a foreign principal that are registrable in relation to the foreign principal, and that there is no registrable arrangement in existence between the person and that foreign principal. The person must be satisfied of these matters before giving this notice to the Secretary.

893. The term *scheme* is defined in section 10 to mean this Act and the rules made under section 71.

894. The term *foreign principal* is defined in section 10 to mean:

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

895. For paragraph 57A(1)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that, at the time the person gave the notice, a registrable arrangement existed between the person and the foreign principal. Recklessness is the fault element for

this physical element. Therefore, the person will need to have been aware of a substantial risk that the registrable arrangement existed and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

896. A **registrable arrangement** is defined in section 13A to mean 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. An arrangement will not be 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.

897. For paragraph 57A(1)(c) of the offence, the prosecution will have to prove beyond a reasonable doubt that, on the day specified in the notice given by the person as the day the person's registration in relation to the foreign principal ceases, a registrable arrangement was still in existence. The prosecution will also have to prove that the person knew that registrable arrangement was in place on that day specified in the notice.

898. For paragraph 57A(1)(d) of the offence, the prosecution will have to prove beyond a reasonable doubt that the person intentionally undertakes an activity on behalf of the foreign principal after that day.

899. The term *activity* is not defined and is intended to refer to a thing that a person does or has done and could include an undertaking, pursuit, occupation, project or task. It is intended to include both a single activity and plural 'activities.'

900. Section 11 provides that a person undertakes an activity *on behalf of* a foreign principal if person undertakes the activity:

- under an arrangement with the foreign principal
- in the service of the foreign principal
- on the order or at the request of the foreign principal, or
- under the direction of the foreign principal, and

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:

- the person would or might undertake the activity, and
- 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).

901. For paragraph 57A(1)(e) of the offence, the prosecution will have to prove beyond a reasonable doubt that the activity undertaken on behalf of the foreign principal (referred to in paragraph 57A(1)(d)) is registrable in relation to the foreign principal. An activity is a registrable activity if it falls within Division 3 of Part 2 of the Act. Recklessness is the fault element for this physical element of the offence. Therefore, the person will have to have been

aware of a substantial risk that the activity is registrable in relation to the foreign principal and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

902. The penalty for this offence is five years imprisonment. The penalty has been lowered from seven years imprisonment in existing subsection 57(2) of the Bill to five years imprisonment consistent with the tiered offence structure for section 57A offences introduced by this Amendment. It is appropriate that section 57A(1) carry a penalty of five years imprisonment given the serious consequences that can flow from hidden foreign influence on Australia's political and governmental processes. This subsection will carry the highest penalty of the section 57A offences, reflecting the fact that a person must have a greater level of culpability to be convicted of an offence under this subsection.

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

903. Subsection 57A(2) makes it an offence for a person to give the Secretary a notice under section 31 indicating they are no longer liable to register under the scheme, reckless as to whether there is a registrable arrangement in existence between the person and a foreign principal, and the person undertakes a registrable activity on behalf of the foreign principal.

904. This offence will be punishable by a maximum penalty of three years imprisonment.

905. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person intentionally gave the Secretary a notice under section 31 for the person's registration under the scheme in relation to a foreign principal
- at the time the person issued the notice a registrable arrangement exists between the person and the foreign principal and the person is reckless as to this
- a registrable arrangement will still be in existence on the day specified in the notice under section 31 as the day the person's registration is to cease and the person is reckless as to this
- the person intentionally undertakes an activity on behalf of the foreign principal after that day, and
- the activity is registrable in relation to the foreign principal and the person is reckless as to this element.

906. Intention is the fault element for paragraphs 57A(2)(a) and (d). Under section 5.2 of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

907. Recklessness is the fault element for paragraphs 57A(2)(b), (c) and (e). Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur, and having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

908. For paragraph 57A(2)(a) of the offence, the prosecution will have to prove, beyond a reasonable doubt, that the defendant gave the Secretary a notice under section 31 for the person's registration under the scheme in relation to the foreign principal. The prosecution will also have to prove that the person intended to issue the notice in relation to the end of registration.

909. The term *person* is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

910. The term *Secretary* is defined at section 10 to mean the Secretary of the Department. This will be the Secretary of the Department that has responsibility for administering the scheme.

911. Section 31 provides that a registrant may give a notice to the Secretary that they have ceased to undertake activities on behalf of a foreign principal that are registrable in relation to the foreign principal, and that there is no registrable arrangement in existence between the person and that foreign principal. The person must be satisfied of these matters before giving this notice to the Secretary.

912. The term *scheme* is defined in section 10 to mean this Act and the rules made under section 71.

913. The term *foreign principal* is defined in section 10 to mean:

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

914. For paragraph 57A(2)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that, at the time the person gave the notice, a registrable arrangement existed between the person and the foreign principal. Recklessness is the fault element for this physical element. Therefore, the person will need to have been aware of a substantial risk that the registrable arrangement existed and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

915. A **registrable arrangement** is defined in section 13A to mean 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. An arrangement will not be 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.

916. For paragraph 57A(2)(c) of the offence, the prosecution will have to prove beyond a reasonable doubt that, on the day specified in the notice given by the person as the day the person's registration in relation to the foreign principal ceases, a registrable arrangement was still in existence. Recklessness is the fault element for this physical element. Therefore, the person will need to have been aware of a substantial risk that the registrable arrangement would still be in existence on the day specified in the notice as the day the person's registration in relation to the foreign principal was to cease and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

917. For paragraph 57A(2)(d), the prosecution will have to prove beyond a reasonable doubt that the person undertakes an activity on behalf of the foreign principal after that day..

918. The term *activity* is not defined and is intended to refer to a thing that a person does or has done and could include an undertaking, pursuit, occupation, project or task. It is intended to include both a single activity and plural 'activities.'

919. Section 11 provides that a person undertakes an activity **on behalf of** a foreign principal if person undertakes the activity:

- under an arrangement with the foreign principal
- in the service of the foreign principal
- on the order or at the request of the foreign principal, or
- under the direction of the foreign principal, and

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:

- the person would or might undertake the activity, and
- 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).

920. For paragraph 57A(2)(e) of the offence, the prosecution will have to prove beyond a reasonable doubt that the activity undertaken on behalf of the foreign principal (referred to in paragraph 57A(2)(d)) is registrable in relation to the foreign principal. An activity is a registrable activity if it falls within Division 3 of Part 2 of the Act.

921. Recklessness is the fault element for this physical element of the offence. Therefore, the person will have to have been aware of a substantial risk that the activity is registrable in relation to the foreign principal and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

922. The penalty for this offence is three years imprisonment. This is appropriate given the significant consequences that can flow from hidden foreign influence on Australia's political and governmental processes. It recognises, however, the level of culpability of the offender is less than where the person knows that the registrable agreement will still be in existence on the day specified in the notice as the day the registration is to cease, as is required in the offence in proposed subsection 57A(1).

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

923. Subsection 57A(3) makes it an offence for a person to give the Secretary a notice under section 31 indicating they are no longer liable to register under the scheme, with the knowledge that there is a registrable arrangement in existence between the person and a foreign principal

924. This offence will be punishable by a maximum penalty of 12 months imprisonment.

925. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person intentionally gave the Secretary a notice under section 31 for the person's registration under the scheme in relation to a foreign principal
- at the time the person issued the notice a registrable arrangement exists between the person and the foreign principal and the person is reckless as to this, and
- a registrable arrangement will still be in existence on the day specified in the notice under section 31 as the day the person's registration is to cease and the person knows this.

926. Intention is the fault element for paragraph 57A(3)(a). Under section 5.2 of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

927. Recklessness is the fault element for paragraph 57A(3)(b). Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur, and having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

928. Paragraph 57A(3)(c) specifies that a fault element of knowledge will apply. Under section 5.3 of the Criminal Code, a person has knowledge of a circumstance if he or she is aware that it exists or will exist in the ordinary course of events.

929. For paragraph 57A(3)(a) of the offence, the prosecution will have to prove, beyond a reasonable doubt, that the defendant gave the Secretary a notice under section 31 for the person's registration under the scheme in relation to the foreign principal. The prosecution will also have to prove that the person intended to issue the notice in relation to the end of registration.

930. The term **person** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

931. The term **Secretary** is defined at section 10 to mean the Secretary of the Department. This will be the Secretary of the Department that has responsibility for administering the scheme.

932. Section 31 provides that a registrant may give a notice to the Secretary that they have ceased to undertake activities on behalf of a foreign principal that are registrable in relation to the foreign principal, and that there is no registrable arrangement in existence between the person and that foreign principal. The person must be satisfied of these matters before giving this notice to the Secretary.

933. The term *scheme* is defined in section 10 to mean this Act and the rules made under section 71.

934. The term *foreign principal* is defined in section 10 to mean:

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

935. A *registrable arrangement* is defined in section 13A to mean 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. An arrangement will not be 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.

936. For subsection 57A(3)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that, at the time the person gave the notice, a registrable arrangement existed between the person and the foreign principal. Recklessness is the fault element for this physical element. Therefore, the person will need to have been aware of a substantial risk that the registrable arrangement existed and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

937. For subsection 57A(3)(c) of the offence, the prosecution will have to prove beyond a reasonable doubt that, on the day specified in the notice given by the person as the day the person's registration in relation to the foreign principal ceases, a registrable arrangement was still in existence. The prosecution will also have to prove that the person knew that the registrable arrangement was in place on the day specified in the notice.

938. The penalty for this offence is 12 months imprisonment. This is a significantly lower penalty than the offences in subsections 57A(1) and (2), reflecting the fact that the person is no longer undertaking activities on behalf of the foreign principal. As such, the potential for the foreign influence to affect political or governmental processes is relatively low. However, it is important to criminalise this type of behaviour, as issuing a notice under section 31 when a registrable arrangement remains in place undermines the transparency objective of the scheme.

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

939. Subsection 57A(4) makes it an offence for a person to give the Secretary a notice under section 31 indicating they are no longer liable to register under the scheme, reckless as to whether there is a registrable arrangement in existence between the person and a foreign principal.

940. This offence will be punishable by a maximum penalty of six months imprisonment.

941. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person intentionally gave the Secretary a notice under section 31 for the person's registration under the scheme in relation to a foreign principal
- at the time the person issued the notice a registrable arrangement exists between the person and the foreign principal and the person is reckless as to this, and
- a registrable arrangement will still be in existence on the day specified in the notice under section 31 as the day the person's registration is to cease and the person is reckless as to this.

942. Intention is the fault element for paragraph 57A(4)(a). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

943. Recklessness is the fault element for paragraphs 57A(4)(b) and (c). Section 5.4 of the Criminal Code provides that a person is reckless with respect to

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur, and having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

944. For paragraph 57A(4)(a) of the offence, the prosecution will have to prove, beyond a reasonable doubt, that the defendant gave the Secretary a notice under section 31 for the person's registration under the scheme in relation to the foreign principal. The prosecution will also have to prove that the person intended to issue the notice in relation to the end of registration.

945. The term **person** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership

- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

946. The term **Secretary** is defined in section 10 to mean the Secretary of the Department. This will be the Secretary of the Department that has responsibility for administering the scheme.

947. Section 31 provides that a registrant may give a notice to the Secretary that they have ceased to undertake activities on behalf of a foreign principal that are registrable in relation to the foreign principal, and that there is no registrable arrangement in existence between the person and that foreign principal. The person must be satisfied of these matters before giving this notice to the Secretary.

948. The term **scheme** is defined in section 10 to mean this Act and the rules made under section 71.

949. The term **foreign principal** is defined in section 10 to mean:

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

950. A **registrable arrangement** is defined in section 13A (as inserted by Amendment 39) to mean 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. An arrangement will not be 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.

951. For paragraph 57A(4)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that, at the time the person gave the notice, a registrable arrangement existed between the person and the foreign principal. Recklessness is the fault element for this physical element. Therefore, the person will need to have been aware of a substantial risk that the registrable arrangement existed and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

952. For paragraph 57A(4)(c) of the offence, the prosecution will have to prove beyond a reasonable doubt that, on the day specified in the notice given by the person as the day the person's registration in relation to the foreign principal ceases, a registrable arrangement was still in existence. Recklessness is the fault element for this physical element. Therefore, the person will need to have been aware of a substantial risk that the registrable arrangement would still be in existence on the day specified in the notice as the day the person's registration in relation to the foreign principal was to cease and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

953. The penalty for this offence is six months imprisonment. This is a significantly lower penalty than the offences in paragraphs 57A(1) and (2), reflecting the fact that the person is no longer undertaking activities on behalf of the foreign principal. As such, the potential for the foreign influence to affect political or governmental processes is relatively low. However, it is important to criminalise this type of behaviour, as issuing a notice under section 31 when a registrable arrangement remains in place undermines the transparency objective of the scheme. The penalty is also lower than that for the offence in paragraph 57A(3) as the level of culpability of the offender is less than where the person knows that the registrable agreement will still be in existence on the day specified in the notice as the day the registration is to cease.

Section 58 – Failure to fulfil responsibilities under the scheme

954. Section 58 establishes a number of offences for failure to fulfil responsibilities under the scheme.

Failure to fulfil reporting responsibility

955. Subsection 58(1) makes it an offence for a person who is required to give a notice under Division 2 of Part 3 (reporting to the Secretary) to fail to do so in accordance with that requirement.

956. The offence is punishable by a maximum penalty of 60 penalty units.

957. To establish this offence, the prosecution is required to prove, beyond a reasonable doubt, that:

- the person is required to give a notice under a provision of Division 2 of Part 3 (reporting to the Secretary) and the person is reckless as to this, and
- the person intentionally fails to give the notice in accordance with the provision.

958. Recklessness is the fault element for paragraph 58(1)(a). Section 5.4 of the Criminal Code provides that a person is reckless with respect to

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and

- a result if he or she is aware of a substantial risk that the result will occur, and having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

959. Intention is the fault element for paragraph 58(1)(b). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

960. For paragraph 58(1)(a), the prosecution is required to prove beyond a reasonable doubt that the defendant is required to give a notice under a provision of Division 2 of Part 3 (reporting to the Secretary) and that the person was reckless as to this element.

961. The term **person** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

962. Notices that can be given under Division 2 of Part 3 include:

- reporting material changes in circumstances (section 34)
- reporting disbursement activity in Australia for the purpose of political or governmental influence (other than in voting period) (section 35)
- reporting on registration review when voting period begins (section 36), and
- reporting registrable activity during voting periods (section 37).

963. For paragraph 58(1)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that the person intentionally failed to give the notice in accordance with the provision.

964. The terms *fails* and *in accordance with* are not defined and are intended to take their ordinary meanings:

- *Fails* is intended to include circumstances where a person neglects to do something
- *In accordance with* is intended to refer to all the requirements of a provision under Division 2 of Part 3 of the Act. For example, a person who submits a notice but does not do so within the timeframe specified in the provision will not have given the notice in accordance with the provision.

965. The penalty for this offence is 60 penalty units. This is appropriate to ensure the transparency objective of the scheme is met and to encourage timely reporting under Division 2 of Part 3 of the Act.

Failure to fulfil responsibility to disclose in communications activity

966. Subsection 58(2) makes it an offence for a person who is required to make a disclosure in accordance with rules made for the purposes of section 38 (disclosure in communications activity) to fail to do so in accordance with the rules.

967. The offence is punishable by a maximum penalty of 60 penalty units.

968. To establish this offence, the prosecution is required to prove, beyond a reasonable doubt, that:

- the person is required to make a disclosure in accordance with rules made for the purposes of section 38 (disclosure in communications activity) and the person is reckless as to this element, and
- the person intentionally fails to make a disclosure in accordance with those rules.

969. Recklessness is the fault element for paragraph 58(2)(a). Section 5.4 of the Criminal Code provides that a person is reckless with respect to

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur, and having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

970. Intention is the fault element for paragraph 58(2)(b). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

971. For paragraph 58(2)(a), the prosecution is required to prove beyond a reasonable doubt that the person is required to make a disclosure in accordance with the rules under

section 38 (disclosure in communications activity) and that the person is reckless as to this element.

972. The term **person** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

973. Section 38 provides that if:

- a person is registered under the scheme in relation to a foreign principal
- the person undertakes **communication activity** (as defined in section 13) on behalf of the foreign principal, and
- 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)

then the person must make a disclosure about the foreign principal in accordance with rules made for the purposes of subsection 38(2).

974. Subsection 38(2) of the Bill specifies that rules may prescribe:

- instances of communications activity
- when and how disclosures are to be made in relation to instances of communications activity
- the content, form and manner of disclosure, and
- circumstances in which a person is exempt from making a disclosure in relation to instances of communications activity.

975. Section 71 of the Bill allows the Minister to make rules prescribing certain matters by way of legislative instrument.

976. For paragraph 58(2)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant intentionally failed to make the disclosure in accordance with the rules.

977. The terms *fails* and *in accordance with* are not defined and are intended to take their ordinary meanings:

- *Fails* is intended to include circumstances where a person neglects to do something.
- *In accordance with* is intended to refer to all the requirements of the rules made for the purposes of section 38. For example, a person who submits a notice but does not do so within the timeframe specified in the provision will not have given the notice in accordance with the provision.

978. The penalty for this offence is 60 penalty units. This is appropriate to ensure the transparency objective of the scheme is met and to encourage disclosure in communications activities.

Section 59 – Failure to comply with notice requiring information

979. Section 59 will make it an offence for a person to fail to comply with a notice given to the person under section 45 or 46 by the end of the period specified in the notice, or by the end of the extended period if the Secretary extends the period specified in the notice, and the defence in subsection 59(2) does not apply.

980. The offence will be punishable by a maximum penalty of 6 months imprisonment.

981. An example of this offence is as follows. Person A is undertaking registrable activities on behalf of foreign political organisation B but has not registered under the scheme. On 1 July 2019, the Secretary issues a notice to Person A under section 45 as the Secretary reasonably suspects that Person A might be liable to register under the scheme in relation to the foreign political organisation. The notice requests Person A provide relevant information and documents by 31 July 2019. Person A does not respond to the notice.

982. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person was given a notice about section 45 or 46, and the person is reckless as to this
- the person intentionally fails to comply with the notice:
 - by the end of the period specified in the notice, or
 - by the end of any extension period granted by the Secretary to comply with the notice.

983. The fault element for paragraph 59(1)(a) is recklessness. Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

984. For paragraph 59(1)(a) of the offence, the prosecution will have to prove beyond a reasonable doubt that the defendant was given a notice under section 45 or 46. Recklessness is the fault element for this element. Therefore, the person will have to have been aware of a substantial risk that he or she was given a notice under section 45 or 46 and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

985. Intention is the fault element for paragraph 59(1)(b). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

986. The term **person** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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].

987. Section 45 enables the Secretary to obtain information to satisfy the Secretary as to whether a person is liable to register under the scheme. Section 46 provides that the Secretary may issue a notice to a person requiring the person provide information or a document to the Secretary that is relevant to the operation of the scheme.

988. For paragraph 59(1)(b) of the offence, the prosecution is required to prove beyond a reasonable doubt that the defendant failed to comply with the notice by the end of the period

specified in the notice or by the end of any extension period granted by the Secretary to comply with the notice.

989. The terms *fails* and *comply* are not defined and are intended to take their ordinary meaning:

- *fails* is intended to include circumstances where a person forgets to or neglects to do something
- *comply* is intended to include to observe, obey, adhere to, conform to and follow. The term is intended to refer to all the requirements of a notice issued under section 45 or 46. For example, a person who provides information in accordance with a notice but does not provide all the relevant information will not have given notice in accordance with the provision.

990. Both sections 45 and 46 provide that notices issued under those sections must specify a period within which the person is required to provide the information or documents to the Secretary. Subsections 45(3) and 46(3) provide that the period specified in the notice must be a period of at least 14 days after the notice is given. On request by the person to whom the notice is given, the Secretary may in writing extend the period within which the person must respond to the notice (subsections 45(4) and 46(4)).

991. The Note in subsection 59(1) clarifies that a notice given under sections 45 or 46 does not override the privileges and immunities contained in section 9A. Section 9A clarifies that the scheme does not abrogate parliamentary privilege or legal professional privilege.

992. The penalty for this offence is six months imprisonment. This is appropriate and reflects the lower level of culpability in this offence as opposed to other offences in the Act. However, it is important to criminalise the conduct in section 59 as it would defeat the transparency objectives of the scheme. The penalty encourages compliance with the scheme, and ensures that people who do not provide the scheme with updated information are subject to criminal sanction.

993. Subsection 59(2) provides offence in subsection 59(1) does not apply where:

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

994. The Note in subsection 59(2) states that the defendant bears an evidential burden in relation to the matter in this subsection. Section 13.3 of the Criminal Code provides that in the case of a standard 'evidential burden' defence, the defendant bears the burden of pointing to evidence that suggests a reasonable possibility that the defence is made out. If this is done, the prosecution must refute the defence beyond reasonable doubt (section 13.1).

995. It is appropriate for a defendant to bear an evidential burden for these matters because the defendant is best placed to provide evidence on what steps, if any, he or she took to provide the information or document within the applicable period specified in the notice and the reasonableness of such actions.

996. A number of terms in subsection 59(2) are not defined and are intended to take their ordinary meanings:

- *all reasonable steps* is intended to mean that a defendant cannot ignore or be careless about whether they have provided information or documents in compliance with a notice issued under section 45 or 46 within the applicable period. Reasonable steps might include that the person has attempted to procure, obtain, gather, find, or locate the information or documents and attempted to submit the information or documents required under the notice. The term is intended to include those things that are within a person's control, and does not include circumstances beyond the control.
- *as soon as practicable* is intended to include as soon as feasible, shortly after, and within a reasonable timeframe.

997. This defence is consistent with the principles set out in the Commonwealth Guide to Framing Offences. The notions of *reasonable steps* in paragraph 59(2)(b) and *as soon as practicable* in paragraph 59(2)(c) rely on assessments of the unique circumstances of the defendant. For example, in relation to *reasonable steps*, a person who does not have access to the internet will take different steps to provide the information or document to a person that does, and an assessment of whether those steps are reasonable would be different in each of those scenarios. In relation to *as soon as practicable*, a person who is very unwell may not be able to provide the information or document for an extended period of time, while a fit and healthy person may be able to provide the information or document much sooner. An assessment of whether that time period is 'as soon as practicable' would be different in each of those scenarios.

998. It would be significantly more difficult and costly for prosecution to go behind the individual circumstances of a defendant to understand what does and does not constitute reasonable steps, and to prove this beyond reasonable doubt as an element of an offence. This information is peculiarly within the mind of the defendant and therefore aligns with the principles set out in the Guide that supports the establishment of offence-specific defences. For example, if a person was unwell and unable to meet the applicable timeframe, they will be able to point to evidence of this very easily, whereas the Commonwealth would not necessarily be able to even identify that the person was unwell, let alone to know that this was the reason why they had failed to meet the applicable timeframe. It would be significantly more difficult and costly for prosecution to go behind the individual circumstances of a defendant to understand whether the person took all reasonable steps to provide the information or document within the applicable period, and whether the person provides the information or document as soon as practicable.

Section 60 – False or misleading information or documents

999. Section 60 will make it an offence to give information or produce a document to the Secretary in response to a notice given to the person under section 45 or 46 knowing that the

information or document is false or misleading, or that the information omits any matter or thing without which it is misleading.

1000. The offence will be punishable by a maximum penalty of three years imprisonment.

1001. An example of this offence is as follows. Person X is engaged by Country Y to undertake parliamentary lobbying and communications activities on its behalf. Person X completes and submits a registration under the scheme but omits information about some of the activities he or she will undertake on behalf of Country Y. The Secretary gives Person X a notice under section 46 of the Act requesting further information and documents about Person X's relationship with Country Y, including the nature of activities undertaken on behalf of Country Y. Person X receives the notice and responds by providing information about the parliamentary lobbying activities he or she is undertaking on behalf of Country Y, but intentionally omits information about distributing communications materials which has the effect of making such information misleading.

1002. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- the person intentionally gave information or produced a document to the Secretary
- the information was given or the document produced in response to a notice given to the person under section 45 or 46, and the person is reckless as to this
- the information or document was false or misleading, or did not contain a matter or thing without which it was misleading, and the person knows this.

1003. Intention is the fault element for paragraph 60(1)(a). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in the conduct.

1004. Recklessness is the fault element for paragraph 60(1)(b). Section 5.4 of the Criminal Code provides that a person is reckless with respect to:

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur and, having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

1005. Knowledge is the fault element for paragraph 60(1)(c). Under section 5.3 of the Criminal Code, a person has knowledge of a circumstance if he or she is aware that it exists or which will exist in the ordinary course of events.

1006. For paragraph 60(1)(a) the prosecution will have to prove beyond a reasonable doubt that the defendant intentionally gave information or produced a document to the Secretary.

1007. The term **person** is defined at section 10 to mean any of the following:

- an individual
- a body corporate
- a body politic
- a partnership
- an association (whether or not incorporated)
- an organisation (whether or not incorporated)
- any combination of individuals who together constitute a body
- an entity or group 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.

1008. The term **Secretary** is defined at section 10 to mean the Secretary of the Department. This will be the Secretary of the Department that administers the scheme.

1009. For paragraph 60(1)(b), the prosecution will have to prove beyond a reasonable doubt that the information was given or the document provided in response to a notice issued to the person under section 45 or 46. Recklessness is the fault element for this element. Therefore, the person will have to be aware of a substantial risk that the information was given or the document provided in response to a notice issued to the person under section 45 or 46 and that, having regard to the circumstances known to him or her, it was unjustifiable to take the risk.

1010. Section 45 enables the Secretary to obtain information to satisfy the Secretary as to whether a person is liable to register under the scheme. Section 46 provides that the Secretary may issue a notice to a person requiring the person provide information or a document to the Secretary that is relevant to the operation of the scheme.

1011. For paragraph 60(1)(c), the prosecution will have to prove beyond a reasonable doubt that the person gives the information or document knowing that the information or document is false or misleading, or the information omits any matter or thing without which the information is misleading.

1012. For the purposes of paragraph 60(1)(c), *false and misleading* is intended to include where incorrect information is provided or provided in such a way that the meaning of the information provides the wrong idea or impression.

1013. The penalty for this offence is three years imprisonment. This is appropriate given the serious implications of providing false or misleading information or documents and the fact that the person is deliberately seeking to defeat the transparency objectives of the

scheme. It also seeks to ensure that persons who are issued notices under sections 45 and 46 provide accurate information, therefore ensuring the scheme holds information that accurately reflects the scale and scope of foreign influence activities in political and governmental processes in Australia. The penalty recognises the serious implications that unchecked and unknown forms and sources of foreign influence can have on Australia's democratic system of government.

1014. Subsections 60(2) to 60(6) set out a number of defences to the offence in subsection 60(1).

1015. Subsection 60(2) provides that the offence in subsection 60(1) does not apply as a result of subparagraph 60(1)(c)(i) if the information given or the document produced is not false or misleading in a material particular. This defence will ensure that a person is not subject to a criminal offence for a minor error which is not material to the operation of the scheme. For example, a person may know that a document is misleading because of minor factual or spelling error this is not material to the operation of the scheme. This defence is consistent with defences for other Commonwealth offences dealing with provision of false or misleading information (for example, subsection 137(3) of the Criminal Code).

1016. The Note to subsection 60(2) states that the defendant bears an evidential burden in relation to the matter in that subsection. Section 13.3 of the Criminal Code provides that in the case of a standard 'evidential burden' defence, the defendant bears the burden of pointing to evidence that suggests a reasonable possibility that the defence is made out. If this is done, the prosecution must refute the defence beyond reasonable doubt (section 13.1).

1017. Subsection 60(3) provides that the offence in subsection 60(1) does not apply as a result of subparagraph 60(1)(c)(ii) if the information given did not omit any matter or thing without which the information is misleading in a material particular. This defence will ensure that a person is not subject to a criminal offence for a minor error which is not material to the operation of the scheme. For example, a person may know that information omits a matter that makes it misleading but this does not affect is not material to the operation of the scheme. This defence is consistent with defences for other Commonwealth offences dealing with provision of false or misleading information (for example, subsection 137(3) of the Criminal Code).

1018. The Note to subsection 60(3) states that the defendant bears an evidential burden in relation to the matters in that subsection. Section 13.3 of the Criminal Code provides that in the case of a standard 'evidential burden' defence, the defendant bears the burden of pointing to evidence that suggests a reasonable possibility that the defence is made out. If this is done, the prosecution must refute the defence beyond reasonable doubt (section 13.1). It is appropriate for a defendant to bear an evidential burden in relation to the matters in subsection 60(2) and subsection 60(3) as the defendant is best placed to provide evidence of how information given or a document provided is not misleading in a material particular or does not omit any matter without which the information is misleading in a material particular. Whether something is false or misleading in a material particular is peculiarly within the mind of the defendant because only the registrant will know the nature of their activities and how they align with the direction or wishes of the foreign principal. An example is as follows:

Person X is engaged by company Y, (which is a foreign government related entity for the purposes of the scheme), to undertake parliamentary lobbying and communications activities on its behalf. Person X completes and submits a registration under the scheme but omits information about some of the activities he or she will undertake on behalf of company Y. The Secretary gives Person X a notice under section 46 of the Act requesting further information and documents about Person X's relationship with company Y, including the nature of activities undertaken on behalf of company Y. Person X receives the notice and responds by providing information about the communications material he or she is distributing on behalf of company Y, but omits information about the parliamentary lobbying activities undertaken on behalf of company Y, which has the effect of making the information provided misleading. However, Person X knows that the information omitted relates to activity that is exempt under the scheme because of the exemption for a person operating under the name of a foreign government related entity which is a commercial or business pursuit under subsection 29(3).

1019. In this example, it is Person X's unique and peculiar knowledge of its registrable arrangement with company Y that makes Person X best-placed to raise the defence at subsection 60(3). Person X will be able to point to evidence that shows the omission does not render the information misleading in a material particular, because the information omitted is exempt under subsection 29(3) of the Bill. This information is peculiarly within the mind of Person X and is consistent with the principles set out in the Guide to Framing Commonwealth Offences relating to offence-specific defences. The Commonwealth may not have the unique knowledge and expertise to make this assessment.

1020. Subsection 60(4) provides that the offence in subsection 60(1) does not apply if, before the information was given or document produced to the Secretary, the Secretary did not take reasonable steps to inform the person of the existence of an offence against subsection 60(1). This places an obligation on the Secretary to include information on relevant forms and notices about the existence of the offence. If the person is not notified of the offence, they will not be liable for prosecution. This defence is consistent with defences for other Commonwealth offences dealing with provision of false or misleading information (for example subsection 137(5) of the Criminal Code).

1021. Subsection 60(5) provides that, for the purposes of the defence at subsection 60(4), it is sufficient if the following form of words is used: 'Giving false or misleading information or documents is an offence'. This provides clarity about the level of detail that is reasonable to discharge the Secretary's responsibility and is consistent with comparable provisions in offences relating to provision of false and misleading information (for example, subsection 137.1(6)).

1022. The Note to subsection 60(4) states that the defendant bears an evidential burden in relation to the matters in these subsections. Section 13.3 of the Criminal Code provides that in the case of a standard 'evidential burden' defence, the defendant bears the burden of pointing to evidence that suggests a reasonable possibility that the defence is made out. If this is done, the prosecution must refute the defence beyond reasonable doubt (section 13.1).

1023. It is appropriate for a defendant to bear an evidential burden in relation to the matter in subsection 60(4) as the defendant is best placed to provide evidence that they were

unaware that it was an offence to provide false or misleading information or documents under the Act prior to giving information or producing documents in response to a notice under section 45 or 46. The defence at subsection 60(4) is consistent with the defence to the equivalent Criminal Code offence at section 137.1, relating to giving false or misleading information. Subsection 137.1(5) of the Criminal Code provides an offence-specific defence where ‘the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1)’.

1024. Subsection 60(6) provides that the offence at subsection 60(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, a competent officer of a body corporate:

- stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular, and
- setting out or referring to the material particular in which the document is, to the knowledge of the first mentioned person, false or misleading (subsection 60(6)).

1025. This defence allows a person to advise the Secretary of an error a document or information. For example, the Secretary may request a person to provide a copy of a contract that is out of date and misleading in material particulars. The person can provide that document with an accompanying statement advising that the document is misleading in a specified way. If the person does so, he or she should not be subject to a criminal offence as he or she has complied with the order to provide the document and also taken reasonable steps to clarify any matters that may be misleading.

1026. An example of the application of this defence is where the Secretary issues a notice requesting a copy of the contract between Person A and foreign political organisation B. Since entering into the contract, foreign political organisation B has changed its name to foreign political organisation L. Person A complies with the notice and produces the document in accordance with the notice, but knows the document is false and misleading by referring to foreign political organisation B. Person A attaches a written statement to the document, stating that the document is false in a material particular (concerning the name of the foreign political organisation) and setting out how the material particular is false as the foreign political organisation has changed its name.

1027. The Note to subsection 60(6) states that the defendant bears an evidential burden in relation to the matters in that subsection. Section 13.3 of the Criminal Code provides that in the case of a standard ‘evidential burden’ defence, the defendant bears the burden of pointing to evidence that suggests a reasonable possibility that the defence is made out. If this is done, the prosecution must refute the defence beyond reasonable doubt (section 13.1).

1028. It is appropriate for a defendant to bear an evidential burden in relation to the matter in subsection 60(6) as the defendant is best placed to provide evidence of the statement they provided to the Secretary advising of the fact that, and setting out how, a document is misleading in a material particular. This defence is consistent with the defence to the equivalent Criminal Code offence at section 137.2 relating to producing false or misleading documents. Subsection 137.2(3) of the Criminal Code provides an offence-specific defence

where a person produces a signed written statement stating that the document is false or misleading and setting out the material particular in which the document is false or misleading.

1029. The defence at subsection 137.1(5) of the Criminal Code was included in response to a recommendation by the Standing Committee on Legal and Constitutional Affairs in its advisory report of the inquiry into the Criminal Code Amendments (Theft Fraud, Bribery and Related Offences) Bill 1999. This defence was suggested as a measure that would limit the offence at section 137.1 of false and misleading information, while ensuring the offence remained robust and able to meet its policy objective.

Section 61 – Destruction etc. of records

1030. Section 61 criminalises a person's failure to keep records with the intention of avoiding or defeating the object of the scheme, and where the result is that records are damaged or concealed or the registrant being prevented from keeping such records.

1031. The offence will be punishable by a maximum penalty of two years imprisonment.

1032. An example of this offence is as follows. Person A is a registrant under the scheme in relation to an arrangement the person has with Country X. Under the registrable arrangement, Person A undertakes parliamentary lobbying activities on behalf of Country X for the purpose of influencing Australian Government policy on energy and gas markets. Person A makes a records of the conversations held with relevant Ministers, with a view to passing this information to Country X. Person A destroys the records once the information has been provided to Country X, to conceal that country's involvement. Person A has intentionally destroyed a scheme record with intention of defeating the transparency objective of the scheme.

1033. To establish this offence, the prosecution will need to prove, beyond a reasonable doubt, that:

- a registrant under the scheme and is required to keep records under the scheme
- the person (whether or not the registrant) intentionally does an act or omits to do an act
- the person does the act or omits to do the act with the intention of avoiding or defeat the object of the Act or any element of the scheme, and
- the act or omission of the registrant or person results in any of the following:
 - damage to, or the destruction of, a scheme record
 - the concealment of a scheme record
 - the registrant being prevented from keeping scheme records.

1034. Recklessness is the fault element for paragraphs 61(a) and (d). Section 5.4 of the Criminal Code provides that a person is reckless with respect to

- a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk, and
- a result if he or she is aware of a substantial risk that the result will occur, and having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

1035. Intention is the fault element for paragraph 61(1)(b). Under subsection 5.2(1) of the Criminal Code, a person has intention with respect to conduct if he or she means to engage in that conduct.

1036. For paragraph 61(1)(a), that the prosecution is required to prove that, under section 40, a registrant was required to keep records under the scheme (known, for the purposes of section 61 as *scheme records*). Recklessness is the relevant fault element.

1037. Section 40 specifies that a person who is registered under the scheme in relation to a foreign principal must keep records for the duration of their registration and for the five year period after which registration ends. Records must be kept in relation to:

- any registrable activities that a person undertakes on behalf of a foreign principal
- any benefits provided to the registrant by the foreign principal
- information or material forming part of any communications activity that is registrable in relation to the foreign principal
- any registrable arrangement between the person and the foreign principal, and
- any other information or material communicated or distributed to the public or a section of the public in Australia on behalf of the foreign principal.

1038. Section 10 provides that the term *registrant* means a person who is registered under the scheme.

1039. For paragraph 61(1)(b) of the offence, the prosecution will have to prove beyond a reasonable doubt that a person intentionally did an act, or omitted to do an act. The person does not need to be the registrant referred to in paragraph 61(1)(a).

1040. The term *person* is defined at section 10 to mean any of the following:

- an individual;
- a body corporate;
- a body politic;
- a partnership;

- an association (whether or not incorporated);
- an organisation (whether or not incorporated);
- any combination of individuals who together constitute a body;
- an entity or group 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.

1041. Paragraph 61(1)(c) requires the prosecution to prove that the person (referred to in paragraph 61(1)(b)) does the act, or omits to do the act, with the intention of avoiding or defeating the object of the Act or any element of the scheme. An example of such conduct is where a person intentionally omits to keep a contract of employment with a foreign principal that establish the terms of engagement upon which the person is to undertake activities in Australia on behalf of the foreign principal for the purposes of political or governmental influence.

1042. The term *scheme* is defined in section 10 to mean this Act and the rules prescribed under section 71.

1043. The terms *avoiding* and *defeating* are not defined and are intended to take their ordinary meaning. For the purposes of section 61, *avoiding* the object of the Act or any element of the scheme could include circumventing, bypassing or evading the object or element. *Defeating* the object or an element of the scheme could include overcoming, preventing or foiling the object or element.

1044. The term *object of the Act* in paragraph 61(1)(c) refers to section 3 of the Act, which provides that the object of the 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.

1045. The term *element of the scheme* is intended to include all requirements under the scheme, as defined in section 10. For example, a registrant who omits to provide a record in relation to a material change in circumstances under section 34 will have failed to comply with an element of the scheme.

1046. For paragraph 61(1)(d) of the offence, the prosecution will have to prove beyond a reasonable doubt that the person's act or omission (referred to in paragraph 61(1)(c)) resulted in:

- damage to a scheme record
- the destruction of a scheme record
- the concealment of a scheme record, or

- a registrant being prevented from keeping scheme records.

1047. The terms *damage*, *destruction* and *concealment* are not defined in paragraph 63(1)(d) and are intended to take their ordinary meanings:

- *damage* could include conduct that impairs the value, usefulness, or normal functioning of the record, or has some other type of detrimental effect on the record
- *destruction* could include acts that cause so much damage that the record no longer exists, or cannot be repaired so that it is in its original state. The term could include the annihilation, obliteration, elimination or eradication of the record
- *concealment* could include hiding, preventing from being known or not producing a record.

1048. Recklessness is the fault element for this physical element. Therefore, the person will have to have been aware of a substantial risk that the act or omission was likely to result in damage to or destruction of the record, or that the act or omission was likely to cause concealment of the record or prevent a registrant from keeping scheme records, and, having regard to the circumstances known to him or her, it is unjustifiable to take that risk.

1049. The penalty for this offence is two years imprisonment. This is appropriate given the conduct described in section 61 has the potential to defeat the transparency objective of the scheme and is comparable with other offences in Act that deter conduct which may undermine the integrity of the scheme. This penalty recognises the importance of maintaining accurate records, which is crucial to the improving transparency of those actors undertaking registrable activities on behalf of foreign principals. However, the lower penalty reflects the fact that section 61 regulates conduct which is less egregious than other types of conduct which would also defeat the transparency objective of the scheme, for example in relation to providing ‘false or misleading information or documents’ under section 60 which carries a maximum penalty of three years imprisonment.

Section 61A – Geographical jurisdiction of offences

1050. Section 61A clarifies the application of geographical jurisdiction to the offences in Part 5 of the Act.

1051. Subsection 61A(1) will provide that 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. Under section 15.4, the effect of Category D geographical jurisdiction is that the offences apply:

- whether or not the conduct constituting the alleged offence occurs in Australia, and
- whether or not a result of the conduct constituting the alleged offence occurs in Australia.

1052. This Part is a reference to Part 5 of the Bill which contains criminal offences for failure to apply for or maintain registration under the scheme (section 57), giving notice of the end of liability to register while still liable to register (new section 57A, as inserted by Amendment 110), failure to fulfil responsibilities under the scheme (section 58), failure to comply with a notice requiring information (section 59), providing false or misleading information or documents (section 60), and for destruction of records (section 61).

1053. The application of Category D jurisdiction to the offences contained in Part 5 is limited to where the defendant is a ***former Cabinet Minister*** or a ***recent designated position holder***.

1054. The term ***former Cabinet Minister*** is defined section 10 of the Act to mean a person who, at a particular time, was a member of the Cabinet at any time before the particular time, and who is not at the particular time a designated position holder.

1055. The term ***recent designated position holder*** is defined in section 10 to mean a person who, at a particular time, was a designated position holder at any time in the 15 years before the particular time, and who is not at the particular time a designated position holder.

1056. The term ***designated position holder*** is defined in section 10 of the Bill to mean any of the following:

- a Minister
- a member of the Parliament
- a person employed under section 13 or 20 of the MOPS Act who is a member of the staff of a Minister and whose position is at or above the level of Senior Advisor
- an Agency Head (within the meaning of the Public Service Act 1999)
- a deputy agency head (however described)
- 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
- the holder of an office of the Commonwealth as an Ambassador or High Commissioner, in a country or place outside Australia.

1057. Category D jurisdiction is appropriate for former Cabinet Ministers and recent designated position holders as people who fall within these categories of individuals are most likely to be able to exert a high degree of influence on Australian political and governmental processes from outside Australia. It is foreseeable that former Cabinet Ministers and recent designated position holders may live and work overseas upon ceasing their public roles and remain highly influential on Australian political and governmental processes from overseas, including from the territory of the foreign government on whose behalf they are acting or from the place of business of other types of foreign principals. It is therefore necessary for the offences in Part 5 of the Act to apply extraterritorially in respect of these individuals.

1058. In addition, the specific categories of registration that apply to former Cabinet Ministers and recent designated position holders (sections 22 and 23 respectively) require registration regardless of where in the world the relevant activities occur. This can be contrasted with sections 20 and 21, which only require registration when the relevant activities occur within Australia.

1059. Subsection 61A(2) clarifies that section 14.1 of the Criminal Code (standard geographical jurisdiction) applies to any other offence against Part 5. Under section 14.1, the effect of standard geographical jurisdiction is that a person does not commit an offence unless:

- the conduct constituting the alleged offence occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft or an Australian ship, or
- the conduct constituting the alleged offence occurs wholly outside Australia and a result of the conduct occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft or an Australian ship.

1060. The effect of subsection 61A(2) means that the offences in Part 5 of the Act carry standard geographical jurisdiction for all persons except for persons who fall within the definitions of *former Cabinet Ministers* and *recent designated position holders* in section 10.

Part 6—Miscellaneous

Section 62 – Simplified outline of this Part

1061. This section provides a simplified outline of Part 6, which deals with miscellaneous matters, including the treatment of persons who are not legal persons, approvals, delegations, rules, reviews and reports relating to the operation of the scheme.

1062. While simplified outlines are included to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.

Section 64 – Treatment of partnerships

1063. Subsection 64(1) clarifies that the scheme applies to a partnership as if the partnership were a legal person, but with the changes set out in this section. This provision has been included to ensure that there is adequate coverage of partnerships that may be acting on behalf of a foreign principal.

1064. Subsection 64(2) provides that an obligation that would otherwise have been imposed on the partnership under the scheme is imposed on each partner instead. The obligation may be discharged by any of the partners – it need not be all of the partners acting together. For example, if a partnership is undertaking registrable activities on behalf of a foreign principal, the partnership would need to register under the scheme. Consistent with the requirements for individuals registered under the scheme, the partnership would be required to maintain records in relation to registration and satisfy the responsibilities of a registrant under Part 3 of

the Act. All of the partners are considered to be under these obligations; however the obligations are met if only one of the partners maintains the records on behalf of the partnership.

1065. Subsection 64(3) provides that an offence against this Act that would have otherwise 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:

- did the relevant act or made the relevant omission
- aided, abetted, counselled or procured the relevant act or omission, or
- 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).

1066. This provision has been included to ensure that partners cannot avoid liability under the scheme simply by virtue of the fact that it is the partnership that is registered under the scheme, rather than the partner as an individual.

1067. Subsection 64(4) provides that a change in the composition of a partnership does not affect the continuity of the partnership for the purposes of the scheme. As such, if a partnership was registered under the scheme, that registration would not change simply by fact that a new partner is added to the partnership, or the partnership changes in some other way.

Section 65 – Treatment of unincorporated bodies

1068. Section 65 provides that the scheme applies to a person that is not a legal person, other than a partnership, as if the person were a legal person. However, changes in respect of that kind of person can be prescribed by rules made under section 71.

1069. This provision has been included to provide sufficient flexibility should a circumstance arise where a person is not a ‘legal person’ but should be subject to the operation of the scheme. It is possible that that kind of person would need special rules in order for the scheme to apply.

Section 66 – Approvals

1070. This section provides that the Secretary may approve forms and the manners for lodging forms for the purposes of the Act. These approvals must be in writing.

1071. Forms, and the manners for lodging forms, refer to various activities under the scheme, including registration, annual renewal of registration, reporting material changes in circumstances, reporting during elections and other voting periods. The ability for the Secretary to approve forms and the manners for lodging forms is intended to establish efficient, standardised processes for the administration of the scheme, but also to provide sufficient flexibility should requirements and practices evolve over time.

1072. Approvals made under this section are not legislative instruments.

Section 67 – Delegations

1073. Subsection 67(1) provides that, subject to subsections (1A) and (1B), the Secretary may delegate any or all of his or her functions or powers under the Act. The delegation must be in writing, and can be made to:

- an SES or acting SES employee within the Department, or
- an APS employee who holds, or is acting in, an Executive Level 2 or equivalent position in the Department.

1074. The Note in subsection 67(1) states that sections 34AA to 34A of the Acts Interpretation Act contain provisions relating to delegations. Section 34AA provides that where an Act confers a power to delegate a function, duty or power, then the power of delegation shall not be construed as being limited to delegating the function, duty or power to a specified person. Rather it should be construed as including a power to delegate the function, duty or power to any person from time to time holding, occupying, or performing the duties of, a specified office or position, even if the office or position does not come into existence until after the delegation is given. As such, the delegation under section 67 could be made to a position number, and SES or Executive Level 2 employees who occupy that position number will have authority to exercise the delegated functions and powers.

1075. Section 34AB of the Acts Interpretation Act provides that:

- delegations may be made generally or otherwise
- the powers that may be delegated do not include a power to delegate
- a function, duty or power that is exercised by a delegate is deemed to have been performed or exercise by the authority, and a delegation does not prevent the performance or exercise of a function, duty or power by the authority.

1076. Section 34A of the Acts Interpretation Act provides that the Secretary would not be prevented from performing the function of exercising the power where a delegation is in place. The powers and functions can operate concurrently.

1077. This delegation power is included for administrative convenience, providing flexibility and promptness while maintaining sufficient oversight. It is appropriate for the Secretary to be able to delegate his or her functions or powers to officers within the Department to ensure the scheme can be efficiently administered. It is not practical, feasible or necessary for the Secretary to personally exercise the powers and functions of the scheme. This would be counterproductive and would lead to long delays in processing matters under the scheme.

1078. The delegation power only allows delegation to SES employees or APS officers at the Executive Level 2 level. Delegation to the level of Executive Level 2 employees is consistent with delegations in comparable pieces of Commonwealth legislation, for example the *AusCheck Act 2007*. This ensures that the powers and functions of the Act are only exercisable by senior officers with experience and judgement in matters of public

administration. However, delegation of the Secretary's functions or powers is restricted or limited in certain circumstances outline in subsections 67(1A) and 67(1B).

1079. Subsection 67(1A) prohibits the Secretary from delegating to any other person his or her functions or powers under sections 14B and 14E relating to the issuing, varying or revoking of a transparency notice.

- Subsection 14B(1) provides that, 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 foreign government related individual (as the case requires). The effect of a provisional transparency notice issued under section 14B(1) is that a person acting on behalf of a person stated to be a foreign government related entity or a foreign government related individual in a transparency notice may be required to register under the scheme if undertaking activities on behalf of such a person in Australia for the purpose of political or governmental influence.
- Subsection 14E(1) provides that the Secretary may vary a transparency notice if the Secretary is satisfied that the details in the notice that identify the person as a foreign government related entity or foreign government related individual (as the case requires) should be updated or corrected.
- Subsection 14E(2) provides that the Secretary must revoke a transparency notice if the Secretary ceases to be satisfied that the person is as foreign government related entity or foreign government related individual (as the case requires).

1080. It is appropriate that the Secretary be restricted from delegating his or her powers in respect these provisions, given the complexity associated with issuing, varying and revoking transparency notices, and the consequences that flow from such decisions.

1081. Subsection 67(1B) provides that the Secretary must not delegate his or her functions or powers under sections 43, 45 or 46 or subsection 53(1) to an APS employee who holds or is acting in an Executive Level 2 or equivalent position in the Department.

1082. Section 43 provides that the Secretary must make certain information publicly available in relation to each person registered in relation to a foreign principal. Section 45 enables the Secretary to issue a notice seeking information from a person if the Secretary reasonably suspects that the person might be liable to register under the scheme in relation to a foreign principal and the person is not registered under the scheme in relation to the foreign principal. Section 46 enables the Secretary to issue a notice seeking information from a person if the Secretary reasonably believes that the person has information that is relevant to the operation of the scheme. Subsection 53(1) provides an authorisation for the Secretary to disclose scheme information for a range of specified purposes and to a person specified for that purpose in the table in that subsection.

1083. The effect of proposed subsection 67(1B) will be to limit the Secretary's ability to delegate his or her powers to make information publicly available under section 43, his or her coercive information gathering powers undersections 45 and 46, and also his or her powers

relating to communication of scheme information under subsection 53(1). These powers will now only be able to be delegated to an SES employee or an acting SES employee in the Department. The term ‘SES employee’ will have the same meaning given to it as in the *Public Service Act 1999*.

1084. Subsection 67(2) provides that the delegate must comply with any written directions of the Secretary when performing delegated functions or exercising delegated powers under the Act. This ensures the delegates are undertaking duties directly at the request of the Secretary, in compliance with the Secretary’s directions and consistent with the objective of the Scheme in ensuring its efficient administration.

Section 68 – Agreements

1085. Section 68 provides that the Secretary may enter into a written agreement with a person for the person to perform services in relation to the scheme, and make payments to the person in accordance with any such agreement. The Secretary is empowered to do these things on behalf of the Commonwealth.

1086. This provision has been included to provide an express legislative basis for the spending of money in relation to the administration of the scheme. The power could be used in circumstances where a contractor or sub-contractor is engaged to perform services in relation to the scheme, such as information technology support for the register.

Section 69 – Annual Report

1087. Subsection 69(1) provides that the Secretary must provide a report to the Minister on the operation of the scheme each year. Reports must be prepared and provided to the Minister as soon as practicable after the end of each financial year, and the content should relate to the operation of the scheme for that financial year. For example, a report being prepared in July 2020 would relate to the 2019-20 financial year (being 1 July 2019 through to 30 June 2020).

1088. The Note included in subsection 69(1) refers to section 34C of the Acts Interpretation Act, which deals with periodic reports to Ministers. Subsection 34C(2) provides that where an Act requires a person to furnish a report to the Minister but does not specify a timeframe within the report is to be finalised, the report must be provided within six months after the end of the particular period to which the report relates. Other provisions deal with requests for extensions for reporting.

1089. Subsection 69(2) requires the annual report to include the following matters in relation to the financial year:

- the number of new registrations
- the number of registrations that ended
- the number of notices give to the Secretary under Division 2 of Part 3 (reporting to the Secretary)

- a statement as to whether the Secretary has complied with section 42 (requirement to keep a register)
- the number of provisional transparency notices issued
- the number of submissions made in response to invitations prepared under subsection 14C(1) for the subjects of provisional transparency notices
- the number of transparency notices varied or revoked
- the number of notices issued under section 45 (notice requiring information to satisfy Secretary whether person is liable to register under the scheme)
- the number of notices issued under section 46 (notice requiring information relevant to scheme)
- the number of documents produced to the Secretary in compliance with notices issued under section 46
- 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)
- a list of the 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)
- the number of persons charged with offences under Part 5 (enforcement)
- the number of proceedings before the courts in relation to the scheme
- any other matters prescribed by the rules for the purposes of this section.

1090. Subsection 69(3) provides that, despite subsection 69(2), the annual report must not include information that the Secretary is satisfied is commercially sensitive or affects national security. The terms ‘commercially sensitive’ and ‘national security’ are not defined in this Act and are to be given their ordinary meaning:

- ‘commercially sensitive’ is intended to cover information such as details that are contained in commercial contracts, where if that detail was revealed it would cause detriment to the parties, or would expose sensitive information relating to a company’s operations, expenditure or employees
- ‘national security’ may cover information relating to the protection of Australia and its people from harm from threats such as espionage, foreign interference, politically motivated violence or the promotion of communal violence. It may also cover information that relates to defence or the

protection of the integrity of Australia's borders or information relating to activities by security and law enforcement agencies.

1091. The terms are intended to operate flexibly as matters that may relate to national security change over time.

Section 70 – Review of operation of the scheme

1092. Section 70 requires the Parliamentary Joint Committee on Intelligence and Security to:

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

1093. This section requires the PJCIS to initiate the review no later than three years after the scheme commences. There is no time limit imposed on the PJCIS to complete the review, but the PJCIS must report its findings to each House of the Parliament as soon as practicable after completing the Review.

Section 71 – Rules

1094. Subsection 71(1) provides that the Minister may make rules prescribing matters which are:

- required or permitted by the Act to be prescribed by the rules, or
- are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

1095. The rule making power in section 71 is specifically referred to in a number of provisions in the Act, including:

- subsection 38(2), which provides that the rules for the scheme may prescribe instances of communications activity, when and how disclosures are to be made in relation to instances of communications activity, the content, form and manner of disclosures, and circumstances in which a person is exempt from making a disclosure in relation to communications activity
- paragraph 43(1)(c), which specifies that any other information prescribed in the rules must be made publicly available by the Secretary on a website in relation to each person registered in relation to a foreign principal
- paragraph 43(2)(c), which provides that the website containing public information about each person registered under the scheme must not contain information of a kind prescribed by the rules

- subsection 43(3), which allows the rules to prescribed circumstances in which the Secretary is to remove publicly available information from the website, and
- item four of the table at subsection 53(1), which provides that the Secretary may communicate scheme information for a purpose, and to a person, prescribed by the rules.

1096. Any rules established under this section are legislative instruments for the purposes of the *Legislation Act 2003* and would be subject to a high level of parliamentary scrutiny. Sections 38 and 39 of the *Legislation Act* provide that all legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days of the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the rules may be considered by the Senate Standing Committee on Regulations and Ordinances, and a motion to disallow the rules may be moved in either House of the Parliament within 15 sitting days of the date the rules are tabled (see section 42 of the *Legislation Act*). This is a broad rule-making power and will ensure that there is requisite authority to make such rules as are necessary to ensure the effective operation of the scheme. The subsection is drafted in a manner to provide flexibility in prescribing matters by rules which may not have been foreshadowed at the time of establishment of the scheme.

1097. Subsection 71(2) provides that the rules may not:

- create an offence or civil penalty
- provide powers of arrest or detention, or entry, search or seizure
- impose a tax
- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act, or
- directly amend the text of the Act.

1098. The restrictions in subsection 71(2) mean that any of the above matters must be achieved by way of amendments to the Act.

1099. Subsection 71(3) provides that any rules established under this section have no effect to the extent that they are inconsistent with regulations (being regulations established under the scheme). Any rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

1100. It is considered appropriate that the matters identified above be dealt with in rules rather than regulations. As a starting point, subordinate instruments should be made in the form of legislative instruments (as distinct from regulations) unless there is good reason not to do so. Matters which should not be dealt with in rules, such as offence provisions or civil penalties, are specifically excluded from being included in rules under section 71 by paragraph 71(2)(a) of the Bill. The Bill's approach of using rules to prescribe various matters has a number of advantages, including:

- facilitating the use of a single type of legislative instrument for the Bill, thereby reducing the complexity otherwise imposed on the regulated community if these matters were to be prescribed across a number of different types of instruments
- simplifying the language and structure of the provisions in the Bill that provide the authority for the legislative instruments, and
- shortening the Bill.