



Annual Report on the Operation of the Foreign Influence Transparency Scheme

1 July 2018 to 30 June 2019

Attorney-General's Department

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SECRETARY'S INTRODUCTION

I am pleased to present the first annual report on the operation of the Foreign Influence Transparency Scheme (the scheme) for 2018-19. The *Foreign Influence Transparency Scheme Act 2018* (the Act), which establishes the scheme, was passed by Parliament on 28 June 2018 and commenced on 10 December 2018. The scheme is a significant transparency measure and the first of its kind in Australia.

This law shines a light on foreign principals operating in Australia and the nature of their activities. It will ensure that Australia's democratic processes are more robust, and participants are more informed, by providing the public and government with visibility of the nature, level and extent of foreign influence in Australia's political and governmental processes.

The scheme achieves this by requiring persons and entities that undertake certain activities on behalf of a foreign principal to register with the department. Details of these registrations are displayed on a publicly available register. The register contains information on the person registering, the activities being undertaken, the foreign principal on whose behalf the activity is undertaken, and the jurisdiction with which they are associated.

The scheme has the potential to touch many parts of Australian life – including the activities of community groups, individuals and businesses across the Australian economy. In recognition of this broad application, much of the activity of my department in 2018-19 has focused on awareness raising with the goal of assisting those with obligations under the scheme to fulfil them. This has included the delivery of information sessions, significant numbers of outreach letters and the operation of a dedicated helpline.

The scheme also played an important role in supporting the integrity of Australia's federal election on 18 May 2019. Recognising that the period leading up to an election – a 'voting period' under the scheme – is a time when there is the potential for heightened activity from those seeking to influence political processes, and a heightened need for transparency of such activities, the scheme imposes compressed reporting timeframes on registrants during these times. As a result, the register was updated regularly during this period to ensure these activities were transparent.

To ensure that the scheme operates effectively, it is supported by a number of criminal offences for non-compliance with penalties for failing to fulfil responsibilities under the scheme or providing false or misleading information varying from six months' to five years' imprisonment. During this reporting period, no referrals for investigation or prosecutions have been made.

CHRIS MORAITIS PSM
Secretary of the Attorney-General's Department

REPORT ON THE OPERATION OF THE FOREIGN INFLUENCE TRANSPARENCY SCHEME (THE SCHEME)

Financial Year Ending 30 June 2019

The *Foreign Influence Transparency Scheme Act 2018* (the Act) requires that the Secretary must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operation of the scheme in relation to that year. This report covers the period from scheme commencement (10 December 2018) to 30 June 2019.

This report will provide information on the operation of the scheme, as per requirements under subsection 69(2), which sets out matters which must be included in the report.

Under subsection 69(3), the report must not include information that the Secretary is satisfied:

- is commercially sensitive; or
- affects national security; or
- is a kind prescribed by the rules for the purposes of subsection 43(2).

No information required under subsection 69(2) has been excluded on the basis of subsection 69(3). During the reporting period, there were no rules prescribed for the purposes of subsection 43(2).

About the Foreign Influence Transparency Scheme

The Act commenced on 10 December 2018, with an initial three month grace period for existing registrable arrangements ending on 10 March 2019. The scheme does not prohibit people or entities from undertaking activities on behalf of a foreign principal but it acknowledges that it is in the public interest that these arrangements are transparent.

Whether a person or entity is required to register will depend on who the foreign principal is, the nature of the activities undertaken, the purpose for which the activities are undertaken, and in some cases, whether the person has held a senior public position in Australia. Broadly speaking, any person is required to register if:

- they undertake registrable activities or enter into a registrable arrangement; and
- the activity is, or will be, undertaken in Australia on behalf of a foreign principal; and
- the activity is undertaken for the purpose of political or governmental influence; and
- no exemptions apply.

Where an obligation to register arises, registration must be completed within 14 days of either entering into a relationship with a foreign principal or undertaking a registrable activity.

For the purposes of the scheme, registrable activities are parliamentary lobbying, general political lobbying, communications activity and disbursement activity.

Foreign principals include foreign governments, foreign political organisations, foreign government related entities and foreign government related individuals.

The Act also imposes more extensive registration obligations for former Cabinet Ministers and recent designated position holders (people who have recently held senior positions in the Australian government, such as former members of Parliament and agency heads). A former Cabinet Minister has a lifelong obligation to register any arrangement they enter into with a foreign principal. Recent designated position holders must register any activity they undertake in relation to a foreign principal in which they contribute experience, knowledge, skills or contracts gained in their former capacity as a designated position holder. This obligations last for 15 years from the date they last held a designated position.

These additional obligations reflect the special nature of the roles that these individuals previously held and is consistent with the recommendation of the Parliamentary Joint Committee on Intelligence and Security, which reviewed the proposed Bill ahead of it being passed by Parliament in 2018.

All of these terms are defined in the legislation establishing the scheme, and further details are available on the Attorney-General's Department website at www.ag.gov.au/transparency.

Key Dates during this reporting period:

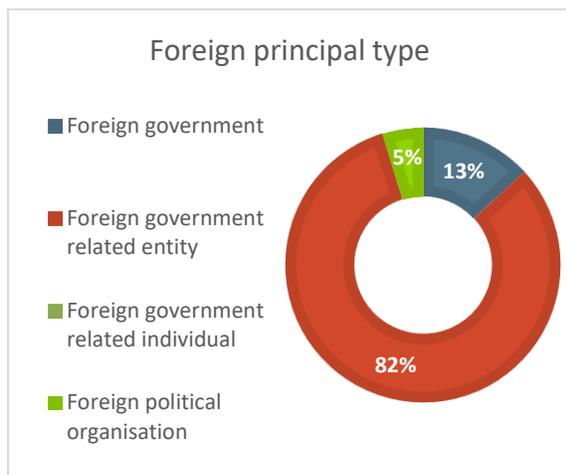
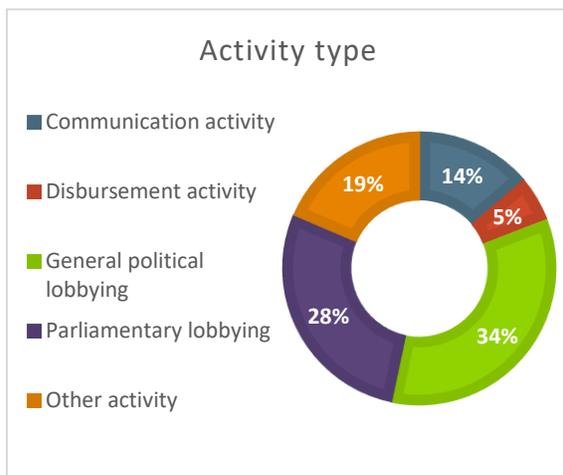
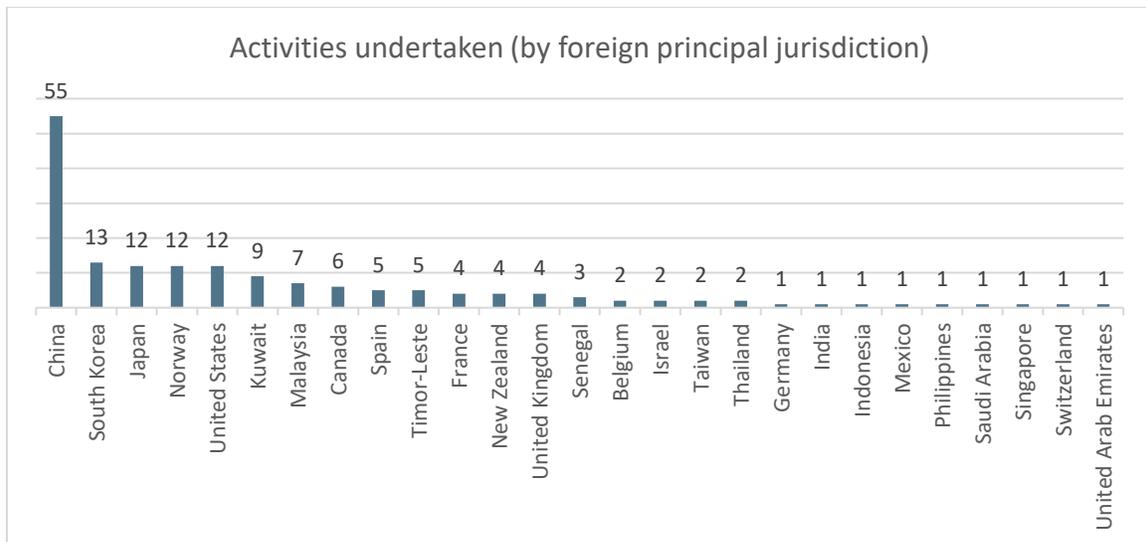
- Scheme commencement date – 10 December 2018.
 - From this date, all new registrable arrangements and activities on behalf of a foreign principal must have been registered within 14 days of the arrangement being entered into and/or activity being undertaken.
- End of the three-month grace period – 10 March 2019.
 - From this date, all arrangements to undertake registrable activities on behalf of a foreign principal which were already in existence when the scheme commenced must be registered.
- Beginning of the voting period – 12 April 2019.
 - A federal election was held on 18 May 2019. The voting period commences on the day the writs for the election are issued.
 - Once a voting period commences, all persons who are registered under the scheme have 14 days to review their information and confirm its accuracy, or update it.
 - During a voting period, there are also reduced timeframes for registrants to report activities (seven days) and for the department to publish updates (48 hours).

- End of the voting period – 18 May 2019.
 - For the purposes the federal election, the voting period ends at the latest time on polling day at which an elector can enter a polling booth and cast a vote.
 - For the 2019 federal election, this was 6:00 pm Australian Western Standard Time.

Number of new registrations received – Paragraph 69(2)(a):

During the reporting period, 39 new registrations were made under the scheme. Of these new registrations, there were 167 activities undertaken on behalf of 67 different foreign principals, which were associated with 27 jurisdictions.

The registrants under the scheme represent a variety of industries and sectors ranging from mining and energy, to technology and academia.



The number of registrations that ended – Paragraph 69(2)(b):

Under the Act, a person is able to end their registration if they cease to undertake activities on behalf of a foreign principal, or end an arrangement with a foreign principal. From this time, the registrant's details will remain on the register, but will be listed as 'ceased.' During the reporting period, no registrations were ended.

The number of reports made to the Secretary – Paragraph 69(2)(c):

Under the Act, a registrant is required to provide updates on the following:

- material changes in circumstances;
- disbursement activities undertaken in Australia for the purpose of political or governmental influence;
- during a voting period: confirmation that a registration is up to date or make updates to registration information; and
- registrable activity (other than disbursement activity) undertaken during a voting period.

During the reporting period there were a total of 269 notices given to the Secretary. These notices were:

- 179 notices of material change in circumstances.
- Nine notices of disbursement activity.
- 23 notices confirming or updating registration details during the voting period (equating to 100% compliance during the voting period).
- 58 notices regarding registrable activities undertaken during the voting period.

A statement as to whether the Secretary has complied with the requirement to keep a register under section 42 – Paragraph 69(2)(d):

The Secretary has complied with section 42 of the Act, through the creation and maintenance of the scheme's public register, which is available at <https://transparency.ag.gov.au/>.

The number of provisional transparency notices issued – Paragraph 69(2)(e):

A transparency notice is a formal notice issued by the Secretary to an individual or an entity declaring that it is a foreign government related individual or a foreign government related entity. The transparency notice makes it clear that the individual or entity is a 'foreign principal' for the purpose of the scheme. If someone is undertaking registrable activities on behalf of the individual or entity, they may need to register.

The transparency notice is called a provisional notice when it is first issued. This is to allow the person that is the subject of the transparency notice to make submissions in relation to the grounds of the notice. If the Secretary becomes satisfied that the person is not a foreign principal, it may be varied or revoked. A provisional transparency notice becomes a final transparency notice if it is not revoked within 28 days.

No provisional transparency notices were issued during the reporting period and, therefore, no final transparency notices were issued or in force during the reporting period.

The number of submissions made in response to invitations for the subjects of provisional transparency notices – Paragraph 69(2)(f):

As no provisional notices were issued or in force during the reporting period, the Secretary did not invite or receive any submissions in response to provisional transparency notices.

The number of transparency notices varied or revoked – Paragraph 69(2)(g):

As no transparency notices were in force during the reporting period, none were varied or revoked during this time.

The number of notices issued under section 45 (notice requiring information to satisfy Secretary whether person is liable to register under the scheme) – Paragraph 69(2)(h):

Under the Act, the Secretary has two powers to obtain information and documents. These are a notice under section 45, which requires a person to provide information to satisfy the Secretary as to whether a person is liable to register under the scheme, and a notice under section 46, which requires a person to provide information relevant to the scheme.

These notices do not imply an assumption of guilt or wrongdoing. They are merely a tool to assist with clarifying whether a registration obligation may exist.

No notices were issued under section 45 of the Act during the reporting period.

The number of notices issued under section 46 (notice requiring information relevant to scheme) – Paragraph 69(2)(i):

No notices were issued under section 46 of the Act during the reporting period.

The number of documents produced to the Secretary in compliance with notices issued under section 46 – Paragraph 69(2)(j):

As no notices were issued or in force under section 46 of the Act during the reporting period, no documents were produced in response.

The number of occasions on which the Secretary or a scheme official communicated scheme information to a person – Paragraph 69(2)(k):

Information protection provisions exist within the Act, which are designed to ensure the information provided to the department is held in strictest confidence. This information is referred to as ‘scheme information’. Sections 52 and 53 of the Act provide for situations in which scheme information can be shared.

Under section 52, the Secretary or another scheme official can communicate scheme information for the purposes of performing functions under the scheme. As part of its administration of the scheme, the department works closely with other Commonwealth departments and agencies to implement the scheme.

Section 53 provides a number of other purposes for which the Secretary or another scheme official can share scheme information. These include, but are not limited to, law enforcement purposes, the protection of public revenue, and protection of security.

There were nine interdepartmental meetings at which a scheme official communicated scheme information to a person in reliance on the authorisation in section 52 of the Act during the reporting period.

The authorisation in section 53 of the Act was not utilised by the Secretary or another scheme official during the reporting period.

A list of departments, agencies, authorities or Australian police forces to which scheme information has been communicated in reliance on the authorisation in section 52 or section 53 (whether or not any other authorisation is also relied on) – Paragraph 69(2)(l):

Scheme information was communicated to the following 14 departments, agencies, authorities or Australian police forces under the authorisation in section 52 of the Act, during the reporting period:

- Australian Federal Police
- Australian Signals Directorate
- Australian Security Intelligence Organisation
- Australian Trade and Investment Commission
- Australian Transaction Reports and Analysis Centre
- Department of Foreign Affairs and Trade
- Department of Communications and the Arts
- Department of Defence
- Department of Education
- Department of Home Affairs
- Department of Industry
- Department of Prime Minister and Cabinet
- Department of Treasury
- Office of National Intelligence

No scheme information was communicated to any departments, agencies, authorities or Australian police forces in reliance on the authorisation in section 53 of the Act during the reporting period.

The number of persons charged with criminal offences (under Part 5 of the Act) – Paragraph 69(2)(m):

Part 5 of the Act contains a number of offences for failing to comply with the scheme (failure to register, provision of false or misleading documents, failure to comply with information-gathering notices, and more). The penalties for these offences range from imprisonment for six months to five years.

No persons were charged with offences under Part 5 of the Act during the reporting period.

The number of proceedings before the courts in relation to the scheme – Paragraph 69(2)(n):

No proceedings were conducted before the courts in relation to the scheme during the reporting period.

Any other matters prescribed by the rules for the purposes of this section – Paragraph 69(2)(o):

No rules have been made which prescribe additional information which must be provided in the annual report.