



Foreign Influence Transparency Scheme

Factsheet 7

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Exemptions from registration

There are a number of exemptions to registering under the scheme. If any of the exemptions apply, potential registrants may not need to register even if they undertake activities on behalf of a foreign principal. The exemptions apply in very specific circumstances, generally where the identity of the foreign principal is apparent or disclosed – meaning that the transparency objective of the scheme is achieved. Those seeking to rely on the exemptions should consider their circumstances carefully.

Humanitarian aid or assistance¹

This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and that activity primarily relates to providing humanitarian aid or assistance.

The terms 'humanitarian aid' and 'humanitarian assistance' apply to activities where the purpose is to save lives, alleviate suffering and maintain human dignity. This exemption covers all direct forms of humanitarian aid and assistance such as donating funds or delivering humanitarian assistance such as medical services. It also covers processes that support the provision of humanitarian aid.

Legal advice or representation²

This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and the activity is, primarily relates to, or is incidental to, providing:

- legal advice
- legal representation in judicial, criminal or civil inquiries, investigations or proceedings, or
- legal representation related to government administration processes involving the foreign principal.

This exemption does not cover all the activities that could be undertaken by a legal practitioner on behalf of a foreign principal and is generally intended to extend only to activities which would be protected by legal professional privilege. Lawyers who undertake other registrable activities on behalf of a foreign principal, such as parliamentary lobbying, may need to register.

Members of Parliament and statutory office holders³

This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and, while the activity is being undertaken, the person holds a position or appointment as:

- a member of the Australian Parliament
- a member of a state Parliament or territory Legislative Assembly, or
- an office bearer under a law of the Commonwealth, state or territory.

¹ Section 24 *Foreign Influence Transparency Scheme Act 2018* (the Act).

² Section 25

³ Section 25A

Example one

Following a meeting between an Australian Commonwealth Minister and a foreign Ambassador, the Minister tasks a staff member with preparing a letter to the Prime Minister seeking agreement to implement a new regime which aligns with the foreign country's interests.

The Australian Minister does not need to register as they are exempt given their position as a member of the Australian Parliament. The staff member preparing the letter is acting under the direction of the Minister, not a foreign principal, and therefore does not need to register.

Diplomatic, consular and similar activities⁴

This exemption applies where a person is undertaking a registrable activity on behalf of a foreign government and the activity is within the scope of the person's function as a diplomatic or consular official. It only applies where the person is formally entitled to either diplomatic or consular privileges or immunities under the *Diplomatic Privileges and Immunities Act 1967*, the *Consular Privileges and Immunities Act 1972* or the *Overseas Missions (Privileges and Immunities) Act 1995*. The activity must be related to the functions that entitle the person to these privileges and immunities.

These Acts do not provide privileges or immunities to locally employed staff at embassies in Australia. However, locally engaged staff are generally exempted when undertaking activities as employees of the foreign government (see below).

Example two

A person is a political counsellor accredited to a foreign government's Embassy in Australia. As part of their role, the person regularly meets with Australian Government officials and members of Parliament to advocate on policy issues relevant to the foreign government. These meetings are undertaken in accordance with the person's official duties as political counsellor, which give rise to the privileges and immunities under the *Diplomatic Privileges and Immunities Act 1967*. The person does not have to register under the scheme.

United Nations officials⁵

This exemption applies to United Nations (UN) personnel or individuals formally associated with the UN who are undertaking a registrable activity on behalf of a foreign principal. The exemption applies to:

- individuals engaged or deployed by the Secretary-General of the UN as a member of the military, police or as a civilian
- other officials or experts on UN missions or at specialised agencies of the UN or the International Atomic Energy Agency
- individuals assigned to the UN by a government or intergovernmental organisation with the agreement of the UN
- individuals engaged by the Secretary-General of the UN, a specialised agency of the UN or the International Atomic Energy Agency, or
- individuals deployed by a humanitarian non-government organisation or agency under an agreement with the UN, one of the UN's specialised agencies or the International Atomic Energy Agency.

⁴ Section 26(1)

⁵ Section 26(2)

The exemption applies when the person is performing any of the official functions, responsibilities or duties specific to their role.

Religion⁶

This exemption applies where a person is undertaking a religious activity on behalf of a foreign principal and that activity is undertaken in good faith.

The exemption covers formal activities related to the exercise of the religion such as attending places of worship or prayer meetings. Activities must be consistent with the principles or beliefs of the religion.

Foreign government employees⁷

This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and does so while employed as an officer of a foreign government and the activity is undertaken in the name of the foreign government.

Example three

A person is employed by a foreign government and arranges a meeting with a Member of Parliament to lobby them about a particular policy. The person makes it clear at the meeting that they are an employee of the foreign government and the lobbying activity is on the behalf of that government. The exemption applies as there is sufficient transparency that the registrable activity is being undertaken on behalf of a foreign government.

This exemption applies where a foreign government is the foreign principal. It does not apply to other foreign principals such as a foreign political organisation or foreign government-related entity.

This exemption does not apply to former Cabinet ministers or recent designated position holders.

Commercial or business pursuits – directors and employees of a foreign government related entity⁸

This exemption applies where:

- a person is undertaking a registrable activity on behalf of a foreign government-related entity
- the activity is a commercial or business pursuit
- the activities are undertaken by the individual are in their capacity as a director, officer or employee of the foreign government-related entity, and
- it is clear that the person is undertaking the activity in their official capacity.

Example four

A person works for foreign government-related entity and arranges a meeting with an Australian Government department official to discuss a transaction involving the provision of goods and services by the entity to the department. It is clear that the person is undertaking the activity in their capacity as an employee of that entity. The person does not need to register under the scheme.

This exemption does not apply to former Cabinet ministers or recent designated position holders.

⁶ Section 27

⁷ Section 29(1)

⁸ Section 29(2)

Commercial or business pursuits – operating under the name of a foreign government related entity⁹

This exemption applies where:

- a person undertakes an activity on behalf of a foreign government related entity
- the activity is a commercial or business pursuit, and
- the person undertakes the activity in or under the same or a substantially similar name to the foreign government-related entity.

The exemption does not apply to former Cabinet ministers or recent designated position holders.

Industry representative bodies¹⁰

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

The exemption applies when:

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

The exemption does not apply to representative groups which are foreign entities or where the membership does not include Australian entities.

Personal representations in government administrative processes¹¹

This exemption applies to individuals who make representations on behalf of a foreign principal in relation to a government administrative process that involves the foreign principal or matters affecting the personal welfare of the foreign principal.

The exemption only applies to a foreign principal who is an individual and not a foreign government, a foreign government-related entity or a foreign political organisation.

The exemption applies when:

- the person is a family member of the foreign principal or knows the foreign principal personally, or
- the person is undertaking the activity because of their personal association with the foreign principal,

and:

- the activity is undertaken in a personal capacity and not a professional capacity, or
- the registrable activity is, or primarily relates to, representing the interests of the foreign principal.

Examples of where this exemption may apply include:

- a person writing to a minister or member of Parliament in relation to a relative's visa application
- a person making representations to the government on behalf of an international student, or
- a person making representations to government related to a foreign individual in immigration detention.

⁹ Section 29(3)

¹⁰ Section 29A

¹¹ Section 29B

Registered charities¹²

This exemption applies to registered charities that undertake certain registrable activities on behalf of a foreign principal in pursuit of the charity's purpose. This exemption only applies to parliamentary lobbying, general political lobbying and communications activities. It does not apply to disbursement activities.

The exemption only applies when:

- the person or entity is a registered charity under the *Australian Charities and Not-for-profits Commission Act 2012*
- the registrable activity is in pursuit of the registered charity's charitable purpose within the specific meaning of Part 3 of the *Charities Act 2013*, and
- at the time the activity is undertaken, both of the following are apparent or disclosed:
 - the activity is being undertaken on behalf of a foreign principal, and
 - the identity of the foreign principal.

Artistic purposes¹³

This exemption applies where a person is undertaking a registrable activity on behalf of a foreign principal and the activity relates to the arts or to a person's artistic purpose. In the case of an entity, the exemption applies where the purpose for undertaking the activity relates to the arts and the registrable activity relates to the entity's artistic purpose.

The exemption applies when:

- both the purpose of undertaking the activity and the actual activity relates to the arts, and
- both of the following are apparent or disclosed:
 - the activity is being undertaken on behalf of a foreign principal, and
 - the identity of that foreign principal.

This exemption only applies to parliamentary lobbying, general political lobbying and communications activities. It does not apply to disbursement activities.

Certain registered organisations¹⁴

This exemption applies where an association of employees or an enterprise association that is registered under the *Fair Work (Registered Organisations) Act 2009* undertakes a registrable activity on behalf of a foreign principal.

The exemption applies when:

- the activity is undertaken in the interests of the members of the organisation in Australia, and
- at the time the activity is undertaken, both of the following are made apparent, or disclosed to the public:
 - the activity is being undertaken on behalf of a foreign principal
 - the identity of the foreign principal.

This exemption only applies to parliamentary lobbying and general political lobbying. It does not apply to communication activity or disbursement activity.

¹² Section 29C

¹³ Section 29D

¹⁴ Section 29E

Activities of members of certain professions¹⁵

The exemption applies where a tax agent, a customs broker or a liquidator or receiver undertakes a registrable activity on behalf of a foreign principal in the usual course of undertaking their profession.

The exemption applies when:

- the person is a member of one of those professions
- the activity is undertaken in the usual course of practising the profession
- the activity relates to providing representation in relation to a government administrative process that involves the foreign principal (for example, representing the foreign principal in dealing with the Australian Taxation Office), and
- at the time the activity is undertaken, both of the following are apparent or disclosed:
 - the activity is being undertaken on behalf of a foreign principal, and
 - the identity of the foreign principal.

Employees and contractors engaged under the *Members of Parliament (Staff) Act 1984* and Commonwealth public officials¹⁶

This exemption applies to a person who is:

- employed under the *Members of Parliament (Staff) Act 1984*,
- engaged as a contractor under the *Members of Parliament (Staff) Act 1984*, or
- a Commonwealth public official as defined in the *Criminal Code Act 1995*.

The exemption will only apply where:

- the person undertakes a registrable activity within the scope of the person's ordinary or usual duties, and
- at the time the activity is undertaken the identity of the foreign principal is made apparent or is disclosed to all persons with whom the person is dealing.

Example five

A person works for a Member of Parliament as an adviser. As part of their official duties, the person meets with foreign government representatives. Following these meetings, the adviser briefs the Member of Parliament about the meeting and makes recommendations for a course of action. The adviser is undertaking these activities within the scope of their usual duties as an adviser and the identity of the foreign principal is evident to the Member of Parliament during their discussions. They will not need to register under the scheme.

Persons engaging in a government decision-making process as required by law¹⁷

This exemption applies where a person is undertaking general political lobbying on behalf of a foreign principal for the purpose of political or governmental influence, and the activity relates to a government decision-making process in which the foreign principal is required by law to participate.

The exemption will only apply where:

- the activity is general political lobbying (as defined by the Act), and
- the foreign principal (or the person undertaking the activity on their behalf) is taking part in a process relating to a federal government decision in order to comply with a law of the Commonwealth, and

¹⁵ Section 29F

¹⁶ Section 30

¹⁷ Section 5, Foreign Influence Transparency Scheme Rules 2018

- the process involves the foreign principal (or the person undertaking the activity on their behalf) providing information in accordance with that law to the decision maker (or another person assisting the decision maker), for the purposes of making the decision, and
- at the time the activity is undertaken, the identity of the foreign principal is either apparent or disclosed to all the persons with whom the person is dealing.

This exemption does not apply to other forms of registrable activity. In addition, it is limited to what is necessary for the foreign principal or the person to comply with the legal requirements – for example, the making of an application. It does not extend to other general political lobbying activities beyond what is required to comply with the law.

Example six

A person is engaged by foreign government related entity X to submit an investment application to the Foreign Investment Review Board (the FIRB) on their behalf. Entity X is required by law to participate in this process. As part of this process, the person (on behalf of the entity) is required to provide information to the Treasury which is intended to influence the decision maker and lead to favourable decision for the foreign principal. This includes providing justifications and reasons why the application should be approved by the FIRB. In making the application, the person makes clear that the applicant is Entity X. The exemption applies to the making of the application.

After making the application, the person contacts Treasury officials to discuss the application and urge them to consider it favourably. This activity is not required in order for Entity X to comply with the law and, to the extent to which the person is seeking to influence the decision, constitutes general political lobbying under the scheme – the exemption does not apply and the person will need to register.

The person also goes on to contact the local Member of Parliament and asks the MP to speak to the Treasurer about the FIRB application. This is parliamentary lobbying and must be registered.