

# EXPLANATORY STATEMENT

Issued by Authority of the Attorney-General

*Foreign Influence Transparency Scheme Act 2018*

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

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### **Authority**

The *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018* (the Rules) are made under section 71 of the *Foreign Influence Transparency Scheme Act 2018* (the Act), for the purposes of section 38 of the Act. The Act establishes the Foreign Influence Transparency Scheme (the scheme). The objective of the scheme is to provide transparency to the public and decision makers about the nature, level and extent of foreign influence on Australia's governmental and political processes.

Section 71 of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters that are required or permitted by the Act to be prescribed by the rules, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

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

- (a) a person is registered under the scheme in relation to a foreign principal; and
- (b) the person undertakes communications activity on behalf of the foreign principal; and
- (c) the communications activity is registrable in relation to the foreign principal within the meaning of section 21 (activity in Australia for the purpose of political or governmental influence).

Subsection 38(2) of the Act provides that the rules may prescribe any or all of the following:

- (a) instances of communications activity;
- (b) when and how disclosures are to be made in relation to instances of communications activity;
- (c) the content, form and manner of disclosures;
- (d) circumstances in which a person is exempt from making a disclosure.

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

The Rules prescribe the following matters for the purposes of paragraphs 38(2)(a), (b) and (c) of the Act, respectively:

- Instances of communications activity;

- When and how disclosures are to be made in relation to instances of communications activity; and
- The content, form and manner of disclosures made in relation to instances of communications activity.

Section 21 of the Act provides that communications activity may be registrable under the scheme if it is undertaken in Australia for the purpose of political or governmental influence, on behalf of a foreign principal.

It is relevant to note that section 13 of the Act 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. As stated in the Explanatory Memorandum to the Act, 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. Despite this broad meaning, the requirement that the communication or distribution be directed at the public or a section of the public means that the instances of communications activity prescribed by the rules for the purposes of paragraph 38(2)(a) must be communication or distribution to the public or a section of the public to be subject to the disclosure requirements.

The disclosure requirement imposed by section 38 of the Act is intended to provide transparency about the forms and sources of foreign influence in the communication or distribution of information or material to the Australian public or sections of the Australian public. This is essential to the transparency objectives of the scheme as it will assist the public to assess the interests which are being represented by the person undertaking the communications activity and to assess the communications in light of their provenance.

The content, form and manner of the disclosure requirement as prescribed by the Rules has been tailored to ensure that it is appropriate for each specified instance of communications activity, while still ensuring that the transparency objective of the scheme is achieved.

## **OTHER ISSUES**

### **More information**

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

### **Regulatory impact analysis**

The Office of Best Practice Regulation (OBPR) in the Department of the Prime Minister and Cabinet considers this proposal to be machinery in nature and has confirmed that a Regulation Impact Statement is not required. The OBPR ID is 24619.

### **Statement of compatibility with human rights**

A statement of compatibility with human rights has been prepared for the Rules and is provided in [Attachment B](#).

### **Matter incorporated by reference**

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

## **Consultation**

Before the Rules were made, the Attorney-General considered the general obligation to consult imposed by section 17 of the *Legislation Act 2003* (the Legislation Act). The Attorney-General was satisfied that consultation was appropriate and reasonably practicable to be undertaken. The Attorney-General's Department undertook extensive consultation with government and non-government stakeholders on the Rules as part of the implementation of the scheme. An exposure draft of the Rules was also published for several weeks on the website of the Attorney-General's Department.

Government agencies consulted on the Rules include: the Department of Finance, the Department of Communications and the Arts, the Department of the Prime Minister and Cabinet, the Department of Home Affairs, the Australian Federal Police, the Treasury, the Australian Charities and Not-for-profits Commission, the Department of Education and Training, the Department of Defence, the Department of Foreign Affairs and Trade, and the Department of Industry, Innovation and Science. Non-government stakeholders consulted on the Rules included representatives of media organisations, lobbying firms and peak bodies, and other persons who may have registration obligations under the scheme. Feedback provided from stakeholders was considered and, where appropriate, incorporated into the finalised Rules.

## NOTES ON PROVISIONS

### Part 1 – Preliminary

#### Section 1 – Name

This section provides that the name of this instrument is the *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018*.

#### Section 2 – Commencement

This section provides for the whole of the Rules to commence at the same time as the *Foreign Influence Transparency Scheme Act 2018*.

#### Section 3 – Authority

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

#### Section 4 – Definitions

The note at the beginning of section 4 states that a number of expressions used in this instrument are defined in the Act, including the following:

- (a) communications activity;
- (b) foreign principal;
- (c) on behalf of;
- (d) person.

The note is intended to provide clarity as to the meaning of these terms as used in the Rules.

This section specifies the meaning of a number of terms used in the Rules.

***Act*** means *Foreign Influence Transparency Scheme Act 2018*.

***digital banner advertising*** is defined to include both of the following:

- (a) displaying a static or dynamic banner on a website accessed using an internet browser;
- (b) causing a video to stream when a banner on such a website is hovered over.

***electronic message*** means a message sent:

- (a) using:
  - (i) a listed carriage service that enables end-users to access the internet; or
  - (ii) any other listed carriage service; and
- (b) to an electronic address in connection with:
  - (i) an email account; or

- (ii) an instant messaging account; or
- (iii) a telephone account; or
- (iv) a similar account;

except a message sent by way of a voice call made using a standard telephone service (within the meaning of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*).

The note below the definition of *electronic message* states that email addresses and telephone numbers are examples of electronic addresses.

***listed carriage service*** has the same meaning as in the *Telecommunications Act 1997*.

***message*** means information:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

***telephony*** includes a voice call:

- (a) whether or not the call involves voice over IP; and
- (b) whether or not the call is initiated by an individual.

***voice call*** means:

- (a) a voice call within the ordinary meaning of that expression; or
- (b) a call that involves a recorded or synthetic voice; or
- (c) if a call covered by paragraph (a) or (b) is not practical for a particular customer with a disability (for example, because the customer has a hearing impairment)—a call that is equivalent to a call covered by either of those paragraphs;

whether or not the customer responds by way of pressing buttons on a telephone handset or similar thing.

## **Part 2 – Disclosures in communications activities**

### **Section 5 – Disclosures in communications activities generally**

Section 5 of the Rules relates to the disclosure requirements applying generally.

The form and manner of disclosures for instances of communications activity are set out in a table at subsection 5(1). The table includes Column 1 (Instance of communications activity) and Column 2 (Form and Manner of disclosure).

Subsection 5(1) provides that, for the purposes of paragraphs 38(2)(a), (b) and (c) of the Act:

- (a) the instances of communications activity in column 1 of the table are prescribed; and
- (b) for each instance of communications activity in column 1 of an item of the table, a disclosure whose content is prescribed by subsection 5(2) is to be made in the form and manner set out in column 2 of the item, subject to subsection 5(3) and sections 6 and 7 of the Rules.

The table at subsection 5(1) provides the following:

- **Item 1** of the table establishes the form and manner of disclosure for the communication or distribution of printed material. Printed material may include, for example, newspaper, magazine or journal articles, pamphlets, how-to-vote cards, or posters. In this instance, the disclosure must be:
  - (a) at the end (or bottom) of each page of the printed material; and
  - (b) in a type size that can be read by a person with 20/20 vision without the use of any visual aid.

This is intended to ensure that where the relevant material goes over multiple pages, the disclosure appears on each page. This is intended to apply to the substance of the material. For example, in the case of a newspaper article that is a registrable communications activity, if the front page of the newspaper prints a headline indicating what the article is about, the disclosure need not appear on the front page of the newspaper but where the article itself actually appears (including if it goes over multiple pages).

- **Item 2** of the table establishes the form and manner of disclosure for communication or distribution using a website, or web page, primarily used for communications activity that:
  - (a) is undertaken on behalf of one or more foreign principals; and
  - (b) is registrable in relation to at least one of those foreign principals within the meaning of section 21 of the Act.

In this instance the disclosure is to be at the bottom of each page of the website or web page. This is intended to ensure that where the relevant content goes over multiple pages, the disclosure appears on each page.

- **Item 3** of the table establishes the form and manner of disclosure for communication or distribution of an article published online or a blog post. In this instance the disclosure must be:
  - (a) at the end of the article or post; or
  - (b) if the article or post appears over 2 or more pages, at the end of the content of the article or post on each of those pages.

This is intended to ensure that where the relevant article or blog post goes over multiple pages, the disclosure appears on each page.

- **Item 4** of the table establishes the form and manner of disclosure for telephony. *Telephony* is defined in section 4 of the Rules to include a voice call, whether or not the call involves voice over IP, and whether or not the call is initiated by an individual. This includes telemarketing calls, Skype and any calls generated by computerised auto-diallers (including robocalls). In this instance the disclosure must be at the beginning of the communication, information or material.
- **Item 5** of the table establishes the form and manner of disclosure for electronic messages. *Electronic message* is defined in section 4 of the Rules to mean a message sent using a listed carriage service that enables end-users to access the internet, or any other listed carriage service; and sent to an electronic address in connection with an email account, an instant messaging account, a telephone account, or a similar account, except a message sent by way of a voice call made using a standard telephone service (within the meaning of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*). *Message* is defined in section 4 of the rules to mean information whether in the form of text, data, speech, music or other sounds, visual images (animated or otherwise), any other form, or in any combination of forms. This is a broad definition and includes messages sent using a variety of platforms, including (but not limited to) iMessage, Facebook Messenger, Snapchat, Instagram, WhatsApp, email, and including SMS, MMS and OTT messages.

In this instance the disclosure must be:

- (a) at the end of the message; or
  - (b) if the content of the disclosure is too long to be included in the message, in a website that can be accessed by a URL that is included in the message with an indication that the URL is of a website that contains a disclosure under the *Foreign Influence Transparency Scheme Act 2018*.
- **Item 6** of the table establishes the form and manner of disclosure for communication or distribution by social media, whether or not involving pictures or other images. In this instance the disclosure must:
    - (a) be included at the end of the communication, or
    - (b) if the content of the disclosure is too long to be included in the communication – in:
      - (i) a website that can be accessed by a URL that is included in the message with an indication that the URL is of a website that contains a disclosure under the *Foreign Influence Transparency Scheme Act 2018*, or
      - (ii) a photo included in the communication.

Social media includes (but is not limited to) social media that uses pictures or other images such as Facebook, Twitter, Instagram and SnapChat.

- **Item 7** of the table establishes the form and manner of disclosure for search advertising. In this instance the disclosure must be:

- (a) at the bottom of the landing page from the URL; or
  - (b) if the content of the disclosure is too long to be included in the word limit of the search limit of the search advertising – in a website that can be accessed by a URL that is included in the search advertising with an indication that the URL is of a website that contains a disclosure under the *Foreign Influence Transparency Scheme Act 2018*.
- **Item 8** of the table establishes the form and manner of disclosure for streaming music. In this instance the disclosure must be in an announcement at the end of the communication. This applies to streaming music using platforms including (but not limited to) Google Play Music, Apple Music or Spotify.
  - **Item 9** of the table establishes the form and manner of disclosure for digital banner advertising. Section 4 of the Rules defines *digital banner advertising* to include both displaying a static or dynamic banner on a website accessed using an internet browser, and causing a video to stream when a banner on such a website is hovered over. In this instance the disclosure must be:
    - (a) at the end of the banner; or
    - (b) if the content of the disclosure is too long to be included or embedded in the banner – in a website that can be accessed by a URL that is included in the banner with an indication that the URL is of a website that contains a disclosure under the *Foreign Influence Transparency Scheme Act 2018*.
  - **Item 10** of the table establishes the form and manner of disclosure for communication or distribution using a mobile phone application or computer application, except communication or distribution covered by another item in the table. In this instance the disclosure must:
    - (a) be included at the end of the information communicated or distributed; or
    - (b) if the content of the disclosure is too long to be included there – in either:
      - (i) a website that can be accessed by a URL that is included on the screen on which the application is open, with an indication that the URL is of a website that contains a disclosure under the *Foreign Influence Transparency Scheme Act 2018*; or
      - (ii) a photo included in the communication.

This is intended to capture mobile phone applications and computer applications not captured elsewhere in the table.

- **Item 11** of the table establishes the form and manner of disclosure for communication by video-sharing or streaming video. In this instance the disclosure must be in an announcement and display at the end of the communication, information or material. This includes (but is not limited to) video-sharing platforms such as YouTube, and video streaming platforms such as Netflix and Stan.
- **Item 12** of the table establishes the form and manner of disclosure for communication or distribution by out-of-home advertising wholly or partly by visual means. In this



instance the disclosure must be at the end (or bottom) of the advertisement. This includes (but is not limited to) advertising on billboards, electronic signs, and on public transport.

- **Item 13** of the table establishes the form and manner of the disclosure for communication or distribution by projection. In this instance the disclosure must be in a display at the end of the communication, information or material. This applies to (but is not limited to) projections in public places, including onto buildings, and projections in a cinema.
- **Item 14** of the table establishes the form and manner of the disclosure for broadcasting by radio (including digital radio). In this instance the disclosure must be in an announcement at the end of the communication, information or material.
- **Item 15** of the table establishes the form and manner of the disclosure for broadcasting by television. This includes television in all forms, including (but not limited to) free to air television, digital television, online television streaming services and television broadcast through providers such as Foxtel. In this instance the disclosure must be in an announcement and display at the end of the communication, information or material.
- **Item 16** of the table establishes the form and manner of disclosure for oral communication made in person. In this instance the announcement must be made (a) at the beginning of the communication; and (b) in any other communication, information or material made, displayed or distributed with the oral communication. This includes (but is not limited to) speeches and presentations, and any accompanying slides or handouts.

The first note following the table in subsection 5(1) of the Rules states that communication or distribution of information is a communications activity only if the communication or distribution is to the public or a section of the public, pursuant to section 13 of the Act. This is intended to serve as a reminder that the instances of communications activity prescribed in the table are only prescribed when the communication or distribution is to the public or a section of the public.

The second note following the table in subsection 5(1) of the Rules states that section 8 deals with the language in which a disclosure is to be made.

Subsection 5(2) provides that, for the purposes of paragraph 38(1)(b) of the Act, the content of the disclosure must:

- (a) identify the person undertaking the communications activity; and
- (b) identify the foreign principal on whose behalf the person undertakes the communications activity; and
- (c) include a statement that the communications activity is undertaken on behalf of a foreign principal; and
- (d) include a statement that the disclosure is made under the *Foreign Influence Transparency Scheme 2018*.

The example following subsection 5(2) of the Rules states:

*A disclosure could be worded along the following lines:*

*“This material is communicated by [name of person] on behalf of [name of foreign principal]. This disclosure is made under the Foreign Influence Transparency Scheme Act 2018.”*

The content of the disclosure as prescribed by subsection 5(2) is central to achieving the transparency objectives of the scheme. It is intended to ensure that the fact that the particular communications activity is undertaken on behalf of a foreign principal for the purpose of influencing Australian political or governmental processes will be apparent to the public when they are the recipient of the communication or distribution. This will ensure that the public and decision makers are able to assess each relevant communication in light of its provenance and assess the interests which are being represented by the person undertaking the communications activity.

The note following the example states that subsection 5(2) is subject to sections 6 and 6 (which provide for simpler disclosures for radio advertisements and authorised political material). These sections are explained below.

Subsection 5(3) provides that if an instance of communications activity is in column 1 of 2 or more items of the table in subsection 5(1), the disclosure required by paragraph 5(1)(b) need be in the form and manner set out in column 2 of only one of those items. This is intended to ensure that if there is an overlap in the instances of communications activities prescribed in column 1 of the table in subsection 5(1), including as new communication methods develop, it is sufficient that the person undertaking the communications activity satisfy the disclosure requirements prescribed in relation to only 1 of those items.

## **Section 6 – Content of disclosure for radio advertisements**

Section 6 of the Rules relates to the disclosure requirements applying to radio advertisements.

Subsection 6(1) provides that for the purposes of paragraph 38(2)(c) of the Act, subsection 6(1) applies in relation to an instance of communications activity in item 14 of the table in subsection 5(1) (about broadcasting by radio, including digital radio), where the information or material (other than the disclosure) communicated is an advertisement.

Subsection 6(2) provides that the content of the disclosure relating to the instance must:

- (a) include a statement that the communication is a registrable activity under the Foreign Influence Transparency Scheme; and
- (b) if the advertisement runs for more than 15 seconds:
  - (i) identify the foreign principal on whose behalf the communications activity is undertaken, if the foreign principal’s identity is not apparent from the advertisement; and
  - (ii) state that the communications activity is undertaken on behalf of the foreign principal, if that is not apparent from the advertisement.

A shorter disclosure requirement is prescribed in relation to radio advertisements to accommodate the time constraints that apply in this context. Further, in the radio broadcasting context, it is typically not possible for the statement to be communicated in visual as well as spoken form. In this instance, a shorter disclosure requirement is more

reasonable and practicable than the disclosure requirement prescribed for other instances of communications. Sufficient details are still required to be disclosed that will alert the audience to the fact that the communication is a registrable activity under the scheme and is being undertaken on behalf of a foreign principal.

For advertisements that are longer than 15 seconds, the requirement to ensure that the identity of the foreign principal is apparent, and that the fact that the communications activity is undertaken on behalf of the foreign principal is also apparent, ensures that there is transparency about the interests being represented in the advertisement. This means that the transparency objectives of the scheme are achieved, without unnecessary duplication that may not be practicable in the radio advertisement context.

## **Section 7 – Form, manner and content of disclosure for authorised political material**

Section 7 of the Rules relates to the disclosure requirements applying to authorised political material.

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

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

This section is intended to address circumstances in which instances of communications activity are subject to the disclosure requirements under the Act and requirements prescribed in any of the above listed laws.

Subsection 7(2) provides that a disclosure relating to the instance of communications activity may be made in the same form and manner as the notification or announcement (instead of the form and manner in column 2 of the item of the table in subsection 5(1) of the Rules).

Subsection 7(3) provides that the content of a disclosure relating to the instance may comply with subsection 7(4) (instead of complying with subsection 5(2) of the Rules).

The effect of subsections 7(2) and (3) is that the person undertaking the communications activity has the option of complying with the form, manner and content requirements prescribed in either section 5 or section 7 of the Rules, for the purpose of fulfilling the disclosure requirements in section 38 of the Act.

Subsection 7(4) provides that a disclosure made in reliance on subsection 7(3) must:

- (a) include a statement that the communication is a registrable activity under the Foreign Influence Transparency Scheme; and
- (b) identify the foreign principal on whose behalf the communications activity is undertaken, if the foreign principal's identity is not apparent from the information or material communicated or distributed, or from the particulars; and

- (c) state that the communications activity is undertaken on behalf of the foreign principal, if that is not apparent from the information or material communicated or distributed, or from the particulars.

This is intended to ensure that there is no requirement for unnecessary duplication when the instance of communications activity is subject to disclosure requirements under section 38 of the Act in addition to requirements prescribed by the relevant provisions of the *Commonwealth Electoral Act 1918*, the *Referendum (Machinery Provisions) Act 1984*, and the *Broadcasting Services Act 1992*. Even if the form, manner and content of disclosure prescribed in section 7 is complied with rather than the requirements prescribed in section 5, it will still be apparent to the audience that the communication is a registrable activity under the scheme, and that the communication is undertaken on behalf of the foreign principal. This ensures that the transparency objectives of the scheme are achieved, without unnecessary duplication.

### **Section 8 – Language of disclosure**

Section 8 states that for the purposes of paragraphs 38(2)(b) and (c) of the Act, a disclosure relating to an instance of a communications activity is to be made in each language used (outside the disclosure) in the information or material communicated or distributed or, if no language is used (outside the disclosure) in that information or material, in English. This means that if a language (or languages) is being used to communicate, the disclosure must be in the same language (or languages). This is intended to ensure that if the audience can understand the information and material, they are also able to understand the disclosure.

### **Section 9 – Written disclosures not to be obstructed or distorted**

Section 9 provides that for the purposes of paragraphs 38(2)(b) and (c) of the Act, so far as a disclosure is, under this Part, to be made in writing, the writing is not to be obstructed, or distorted, to any extent by anything in the rest of the communication, information or material.

This is intended to ensure that the disclosure achieves its intended effect and is accessible to the audience.

**Statement of Compatibility with Human Rights**

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

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

The rules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Rules**

The *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018* (the Rules) are made under section 71 of the *Foreign Influence Transparency Scheme Act 2018* (the Act), for the purposes of section 38 of the Act. The Act establishes the Foreign Influence Transparency Scheme (the scheme). The objective of the scheme is to provide transparency to the public and decision makers about the nature, level and extent of foreign influence on Australia's governmental and political processes.

Section 71 of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters that are required or permitted by the Act to be prescribed by the rules, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

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

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

- (a) a person is registered under the scheme in relation to a foreign principal; and
- (b) the person undertakes communications activity on behalf of the foreign principal; and
- (c) the communications activity is registrable in relation to the foreign principal within the meaning of section 21 (activity in Australia for the purpose of political or governmental influence).

Subsection 38(2) of the Act provides that the rules may prescribe any or all of the following:

- (a) instances of communications activity;
- (b) when and how disclosures are to be made in relation to instances of communications activity;
- (c) the content, form and manner of disclosures;
- (d) circumstances in which a person is exempt from making a disclosure.

The Rules prescribe the following matters for the purposes of paragraphs 38(2)(a), (b) and (c) of the Act, respectively:

- Instances of communications activity;

- When and how disclosures are to be made in relation to instances of communications activity; and
- The content, form and manner of disclosures made in relation to instances of communications activity.

Section 21 of the Act provides that communications activity may be registrable under the scheme if it is undertaken in Australia for the purpose of political or governmental influence, on behalf of a foreign principal.

It is relevant to note that section 13 of the Act 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. As stated in the Explanatory Memorandum to the Act, 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. Despite this broad meaning, the requirement that the communication or distribution be directed at the public or a section of the public means that the instances of communications activity prescribed by the rules for the purposes of paragraph 38(2)(a) must be communication or distribution to the public or a section of the public to be subject to the disclosure requirements.

The disclosure requirement imposed by section 38 of the Act is intended to provide transparency about the forms and sources of foreign influence in the communication or distribution of information or material to the Australian public or sections of the Australian public. This is essential to the transparency objective of the scheme as it will assist the public to assess the interests which are being represented by the person undertaking the communications activity and to assess the communications in light of their provenance.

The content, form and manner of the disclosure requirement as prescribed by the Rules has been tailored to ensure that it is appropriate for each specified instance of communications activity, while still ensuring that the transparency objective of the scheme is achieved.

### **Human rights implications**

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

- the right to opinion and freedom of expression as contained in article 19; and
- the right to take part in public affairs and elections as contained in article 25; and
- the right to privacy as contained in article 17.

### *Legitimate objective of the rules*

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. In the following discussion of the Rules and their impacts on human rights, the Committee should consider the following objective of the policy measures.

The objective of the Rules is to prescribe the content, form and manner of disclosures required under section 38 of the Act, which apply to persons who undertake

communications activities on behalf of foreign principals for the purpose of political and governmental influence, in order to facilitate the transparency of reasons they are undertaking the communications activity. The Rules do not prevent communications activities; they merely ensure that fact the activities are being undertaken on behalf of the foreign principal is transparent. The Rules will ensure that the public and decision makers are aware when communications activities to which they are subject are being undertaken on behalf of foreign principals to influence political or governmental processes and decision making, and are therefore considered reasonable, necessary and proportionate to the objectives of the Rules.

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

The Rules engage the right to freedom of expression and the right to take part in public affairs.

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

These Rules promote the right to freedom of expression and the right to participate in public affairs by facilitating and creating a transparent political system, where sources of foreign influence in communication activities undertaken for the purpose of political or governmental influence are clearly visible. Under the Act, persons remain able to legitimately and lawfully undertaken activities on behalf of foreign principals in Australia and promote the interests of the foreign principal, provided that their activities, where registrable under the Act, are lawful and transparent.

The Rules do, however, prescribe the details referred to in section 38 of the Act, specifying the form, manner and content of the disclosures that participants must make when exercising free expression or participating in public affairs, potentially limiting individuals’ rights to freedom of expression or participation in public affairs.

The rights to freedom of expression and to participate in public affairs are not absolute rights. The right to freedom of expression carries special duties and responsibilities, and can be subject to certain restrictions (Article 19(3)). The right to participation in public affairs may be subject to restrictions on the condition that that they are provided by law and necessary for the respect of rights, the reputation of others or for the protection of the public order.

To the extent that these rights are limited, it is for the purpose of the scheme’s legitimate objective of ensuring transparency about the forms and sources of foreign influence in Australian political and governmental processes, including activities such as communications activities undertaken for the purpose of achieving this influence. Concealed foreign influence in communication activities could result in the interests of a foreign principal being advanced to the impairment of Australia’s national interest, due to the lack of transparency. When foreign principals use intermediaries to undertake communication activities on their behalf in Australia, decision makers and the public are limited in their ability to make informed decisions about the basis these communications are made. Therefore, in order to promote the respect of rights and the protection of the public order, the Rules impose certain requirements which engage the right to freedom of expression.

The requirements imposed are not unreasonable or overly arduous, and are consistent with the requirements imposed on domestic political advertising. The information that is required to be disclosed is limited to that which is directly relevant to ensure that the audience of the communication is aware that the communication is being undertaken for the purpose of foreign influence in Australian political and governmental processes.

These Rules will highlight, and do not prohibit or limit, communications activities undertaken on behalf of foreign principals within Australia when the activities are undertaken transparently. Provided that the communication activity includes an appropriate disclosure, and the registrant is registered under the scheme, people will still be able to undertake communication activities on behalf of foreign principals for the purpose of political or governmental influence. An example of such restrictions may be where a person communicates or distributes information or material on behalf of a foreign principal using a video-sharing platform. In this instance the disclosure must be announced and displayed at the end of the video and must:

- (a) identify the person undertaking the communications activity; and
- (b) identify the foreign principal on whose behalf the person undertakes the communications activity; and
- (c) include a statement that the communications activity is undertaken on behalf of the foreign principal; and
- (d) include a statement that the disclosure is made under the *Foreign Influence Transparency Scheme Act 2018*.

These restrictions are objective, legitimate and proportionate to Article 19 and Article 25 of the ICCPR because the Rules are provided for by law, and they are serving a genuine public interest by protecting the integrity of Australia's political and governmental processes and ensuring they are free from concealed influence by foreign principals. This ensures that the public and decision makers are informed of the provenance of the information or material when they are subject to the communications activity, which is essential to Australia's system of representative government.

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 in 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.

The form, manner and content of the disclosure as prescribed by the Rules is tailored to ensure that it is appropriate in each specific circumstance. For example, in some instances, where the content is too long to be included in the communication, there is the option of providing the disclosure in a website accessible from the communication instead. Similarly, the Rules accommodate the particular time restraints applying in the context of radio advertisements, particularly advertisements of less than 15 seconds, by providing for alternative abridged disclosure requirements.

The Rules also accommodate the practicalities of complying with the disclosure requirements under section 38 of the Act, in addition to matters required to be notified under any of the following laws:



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

In the event that a communications activity is subject to the disclosure requirements under the Act as well as any of these laws, the Rules prescribe an alternative, abridged disclosure requirement that is less onerous and duplicative.

In light of the discussion above, to the extent that the Rules limit the rights contained within article 19 and 25 of the ICCPR, they are proportionate, necessary and reasonable.

### *Right to Privacy (Article 17)*

Article 17(1) of the ICCPR provides that no-one should be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. Furthermore, article 17(2) provides that everyone has the right to the protection of the law against such interference. The right may be limited when the limitation is lawful, not arbitrary, and reasonable, necessary and proportionate to achieve a legitimate objective.

The Rules limit the right to privacy because it requires the disclosure of information about the activities and relationships of persons or entities undertaking particular activities on behalf of a foreign principal. However, this restriction on the right to privacy is considered reasonable and necessary as the disclosure of some information is necessary to achieve the transparency objective of the scheme.

The disclosure requirement achieves the fundamental transparency objective of the scheme, as it provides clarity to the Australian public and decision-makers on the sources of foreign influence which is impacting the Australian political sphere and governmental systems and processes.

The type of information that is required to be disclosed when undertaking the relevant communications activity (that is, the content of the disclosure) is rationally connected to the objectives of the scheme, and is necessary to achieving these legitimate objectives. The publicly available information is solely that which is necessary to identify the person undertaking the communications activity, the foreign principal on whose behalf they are undertaking the communications activity, and disclose the fact that they are doing so. The information to be disclosed does not go beyond the point of necessity.

The information to be disclosed in accordance with the Rules is a reasonable and proportionate restriction on the right to privacy. As outlined above, the information to be disclosed is only that necessary to identify the person undertaking the communications activity, and is directly relevant to their registrable activities under the scheme. For example, an individual is not required to provide information about domestic principals on whose behalf they may be undertaking activities, as this is not reasonably in connection with the scheme. To the extent that the scheme allows for the disclosure of certain information, and the subsequent limitation on the right to privacy, this limitation is considered reasonable, necessary and proportionate to achieve the transparency objective of the scheme.

### Conclusion

The Rules are compatible with human rights because to the extent that they limit human rights, those limitations are reasonable, necessary and proportionate. The Rules ultimately promote and protect government and public knowledge of the nature, level and extent of foreign influence in Australian federal political and governmental processes.