

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

I, Christian Porter, Attorney‑General, make the following rules.

Dated 6 December 2018

Christian Porter

Attorney‑General

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Part 1—Preliminary

1 Name

This instrument is the *Foreign Influence Transparency Scheme (Disclosure in Communications Activity) Rules 2018*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | At the same time as the *Foreign Influence Transparency Scheme Act 2018* commences. | 10 December 2018 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Foreign Influence Transparency Scheme Act 2018*.

4 Definitions

Note: 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.

In this instrument:

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

***digital banner advertising*** includes 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*).

Note: 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

5 Disclosures in communications activities generally

(1) 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 following table are prescribed; and

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

| Form and manner of disclosures for instances of communications activity | | |
| --- | --- | --- |
|  | Column 1 Instance of communications activity | Column 2 Form and manner of disclosure |
| 1 | Communication or distribution of printed material | (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 |
| 2 | 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 | At the bottom of each page of the website or web page |
| 3 | Communication or distribution of an article published online or a blog post | (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 |
| 4 | Telephony | At the beginning of the communication, information or material |
| 5 | Electronic message | (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* |
| 6 | Communication or distribution by social media, whether or not involving pictures or other images | (a) 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 communication 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 |
| 7 | Search advertising | (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 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* |
| 8 | Streaming music | In an announcement at the end of the communication |
| 9 | Digital banner advertising | (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* |
| 10 | Communication or distribution using a mobile phone application or computer application, except communication or distribution covered by another item | (a) at the end of the information or material 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 |
| 11 | Video‑sharing or streaming video | In an announcement and display at the end of the communication, information or material |
| 12 | Communication or distribution by out‑of‑home advertising wholly or partly by visual means | In a display at the end (or bottom) of the advertisement |
| 13 | Communication or distribution by projection | In a display at the end of the communication, information or material |
| 14 | Broadcasting by radio (including digital radio) | In an announcement at the end of the communication, information or material |
| 15 | Broadcasting by television | In an announcement and display at the end of the communication, information or material |
| 16 | Oral communication made in person | (a) at the beginning of the communication; and  (b) in any other communication, information or material made, displayed or distributed with the oral communication |

Note 1: 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: see section 13 of the Act.

Note 2: Section 8 deals with the language in which a disclosure is to be made.

Content of disclosures except for radio advertisements and authorised political material

(2) For the purposes of paragraph (1)(b), 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 the foreign principal; and

(d) include a statement that the disclosure is made under the *Foreign Influence Transparency Scheme Act 2018*.

Example: 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*.”

Note: This subsection is subject to sections 6 and 7 (which provide for simpler disclosures for radio advertisements and authorised political material).

Instances of communications activity covered by 2 or more table items

(3) If an instance of communications activity is in column 1 of 2 or more items of the table in subsection (1), the disclosure required by paragraph (1)(b) need be in the form and manner set out in column 2 of only one of those items.

6 Content of disclosure for radio advertisements

(1) For the purposes of paragraph 38(2)(c) of the Act, this section 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.

(2) 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.

7 Form, manner and content of disclosure for authorised political material

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

(a) Part XXA of the *Commonwealth Electoral Act 1918*;

(b) Part IX of the *Referendum (Machinery Provisions) Act 1984*;

(c) subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*.

(2) A disclosure relating to the instance 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)).

(3) The content of a disclosure relating to the instance may comply with subsection (4) of this section (instead of complying with subsection 5(2)).

(4) A disclosure made in reliance on subsection (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.

8 Language of disclosure

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.

9 Written disclosures not to be obstructed or distorted

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.