

Foreign Influence Transparency Scheme - Checklist

There are 3 elements to the Scheme that taken together will indicate whether a person (or entity) should register an activity they are engaged in:

1. An activity is being funded or conducted on behalf of or under the direction of a foreign principal

In the legislation this is referred to as a “*registerable activity*” and includes activities undertaken:

- Under an arrangement with the foreign principal (refer to definition below)
- In the service of the foreign principal
- On the order or at the request of the foreign principal, or
- Under the direction of the foreign principal.

The nature of the relationship is one where it is expected or intended that the person would undertake the activity on behalf of the foreign principal.

The activity may be mutually beneficial. It does not need not involve a payment or direct benefit to the person themselves.

The arrangement can be formal or informal, written or verbal – a contract, understanding or agreement made in Australia or overseas.

2. That foreign principal is a foreign government or political organisation, or their representative

In the legislation a “*foreign principal*” includes:

- A foreign government
 - a government, or parts of a government; government authority (agencies, departments, etc. acting on behalf of a government or parts of a government of a foreign country, local government or regional body
- A foreign political organisation
 - a foreign political party; or organisation primarily concerned to pursue political objectives
- A foreign government-related entity, is
 - A company where either a foreign government or political organisation holds more than **15%** of share capital/voting rights; or appoints at least **20%** of the board of directors who usually acts according to instruction or wishes (by formal or informal obligation); or the foreign government or political organisation is in a position to exercise total control.
 - An entity where board members, for whatever reason, act in accordance with a foreign government or foreign political organisation.
 - An entity where its directors or employees are required to be members of a foreign political organisation and that requirement is set out in the entity’s constituting documents/rules of operation.
- A foreign government-related individual, who is
 - Not an Australian citizen or permanent resident, and
 - Subject to foreign political control by formal or informal obligation.

3. The activity is for the purpose of influencing Australian political or government outcomes or decisions

That is, the activity is intended or has the consequence of influencing outcomes delivered or decisions made by:

- Politicians or their advisers.
- Government officers or agencies.
- Registered political parties.
- Members of the public who vote or engage in political campaigning.

The concept of “*for the purpose of*” means that the sole, primary or a substantial reasons for the activity is to exert influence. In general, usual academic activity would not be regarded as being for the purpose of exerting influence. Consultancies, special or side projects should be considered on a case by case basis.

The concept of “*influencing*” a political or government process can include:

- Political or government decisions (public policy, legislative or regulatory processes, procurement or grant-making decisions).
- Affecting or impacting on a process, decision or outcome – to cause a change or to maintain the *status quo*.

A “*registerable activity*” is political in nature and may include:

- Lobbying to express a particular view on behalf of a foreign principal in the following ways:
 - Meeting with parliamentary members or their staff (i.e. outside normal diplomatic channels).
 - Writing to government departments or officials.
 - Contacting registered political parties or candidates during federal elections.
- Communication activity – of any kind where information or material (in any form) is disseminated (e.g. an on-line opinion piece or newspaper article) for the *purpose of influencing* the views and opinions of people involved in political or government processes (including voters during an election). In these circumstances, the communication should include a disclosure that the opinion or view expressed is made on behalf of a foreign entity.
- Disbursements of money or things of value, where that disbursement is intended to influence views or opinions.

General obligations a person (or entity) engaged in a registerable activity should note:

It is an offence to not register. Maximum penalties for individuals range from 6 months to 5 years of imprisonment.

It is an offence to not maintain an accurate registration of activities under the scheme. Maximum penalties range from \$12k to 6 months of imprisonment.

More than one activity may need to be registered (i.e. is not just about the person but the scope and nature of the activities also). A person must report new registerable activities or changes in circumstances and must respond to requests for information from the Commonwealth Attorney General's Department.

A person registered under the scheme may be subject to additional scrutiny during an election campaign.

Records of registrable activities must be kept while the person is registered under the scheme and for a further 3 years afterwards.

The objective of the legislation is to ensure transparency in political or government activity – not to restrict or curb international engagement or relationship building or commercial pursuits or charitable objectives.

The scheme does not prevent a person from acting on behalf of a foreign entity for the purpose of influencing political outcomes – they just have to register and make transparent disclosures about their activity.

Further information:

Attorney-General's Department:

- Scheme summary: <https://www.ag.gov.au/Integrity/foreign-influence-transparency-scheme>
- Pre-registration Questionnaire: <https://transparency.ag.gov.au/myregistration/preregister>

Legal and Risk website:

<https://www.adelaide.edu.au/legalandrisk/integrity>

Legal and Risk: helpdesklegal@adelaide.edu.au

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Please note that this legislative overview does not constitute legal advice.