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Attorney-General's Department Submission

**Inquiry into the
Foreign Influence Transparency Scheme Bill 2017**

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1. Introduction

1. The Attorney-General's Department welcomes the opportunity to provide the Parliamentary Joint Committee on Intelligence and Security with this submission as part of the Committee's inquiry into the Foreign Influence Transparency Scheme Bill 2017 (FITS Bill). The FITS Bill was introduced into the House of Representatives on 7 December 2017 by the Prime Minister, the Hon Malcolm Turnbull MP, and referred to the Committee on 8 December 2017 for inquiry and report by February 2018.

2. The FITS Bill will establish a Foreign Influence Transparency Scheme (the Scheme) to provide the public and decision-makers in government visibility of the level and extent to which foreign principals may be seeking to influence Australia's government and political process. It will operate as a transparency measure, introducing registration obligations for persons and entities who have arrangements with, or undertake certain activities on behalf of, foreign principals. There is currently no scheme of this nature addressing foreign influence in Australia.

3. Foreign influence can take many forms and derive from many sources. In the context of the FITS Bill, foreign influence refers to activities conducted on behalf of a foreign principal that influence Australian government and political systems and processes. In some instances, the simple act of being employed by a foreign principal is enough to warrant transparency, because of the high-degree of latent influence arising as a result of a person's unique skills, knowledge and expertise. Left undisclosed, foreign influence can have serious implications for sovereignty and national policy as it may result in the prioritisation of foreign interests over domestic interests. For example, where a foreign principal engages an intermediary to represent their interests within Australia, the relationship between the intermediary and the foreign principal may remain hidden thereby concealing the foreign interest at play.

4. Australia experiences undisclosed foreign influence in government and political systems and process, and more broadly in the Australian community. Internationally, covert foreign influence is allegedly being directed against liberal democracies through interference in democratic elections overseas.

5. The Scheme is a significant measure to address the challenges described above. It will help protect the integrity of Australia's political institutions by ensuring Australian decision-makers and the public can accurately assess the foreign influence being represented in relation to a particular decision or process which otherwise would remain unseen and unregulated. While foreign principals often have a legitimate interest in influencing Australian political and governmental processes, obfuscating their interest via an intermediary hampers the ability of Australian decision-makers and the public to make informed decisions and assess any influence being brought to bear. The Scheme provides the tools necessary to illuminate such influence. The Scheme also will help protect the freedom of political communications, which is a fundamental pillar of Australia's democratic system of government, and finally, will complement whole-of-government efforts to protect Australia from the serious threat of covert foreign interference.

6. This submission outlines the key considerations that influenced the development of the Scheme. It highlights the features through which the Scheme will protect Australia's sovereign interests and the people of Australia. This submission also outlines intended administrative arrangements for the Scheme.

2. Why Australia needs a Foreign Influence Transparency Scheme

7. In May 2017 the Prime Minister requested that the Attorney-General conduct a comprehensive review of Australia's espionage, foreign interference, treason and related laws. The terms of reference included that the review consider the merit of creating a legislative regime based on the United States' *Foreign Agents Registration Act 1938*. The review accordingly explored the role that such a regime could play in the Australian Government's work to address espionage and foreign interference in Australia.

The US experience - Foreign Agents Registration Act

8. The *Foreign Agents Registration Act 1938* (FARA) is a disclosure statute that requires persons acting as 'agents of foreign principals' in a political or quasi-political capacity to periodically publicly disclose their relationship with a foreign principal, and information about related activities and finances. The purpose of FARA is to provide transparency that ensures the United States (US) Government and the people of the US are informed of the sources of information and identities of 'foreign agent' intermediaries that attempt to influence US government and political policy and process.

9. FARA was enacted in 1938 and was a response to wartime propagandists acting on behalf of foreign powers. In 1966 FARA was amended to emphasise the role of 'foreign agents' in exercising foreign influence in government decision-making, and to link FARA more closely with political and government processes. Subsequent major amendment, effected through the passage of the *Lobbying Disclosure Act 1995*¹, introduced a new exemption providing that foreign agents registered under the Lobbying Disclosure Act were not required to also register with FARA.

10. FARA applies to individuals, partnerships, associations, corporations, organisations or any other combination of individuals who:

- act under the order, request, control or direction of, or whose activities are directly or indirectly supervised, directed, controlled, financed or subsidised in whole or substantial part by a foreign principal (including a foreign country, person or organisation outside the US),² and
- on behalf of the foreign principal within the US, engage in political activities; act as a public relations counsel, publicity agent, information service employee or political consultant; solicit, collect, disburse or dispense contributions, loans, money or other things of value; or make representations to US government agencies or officials.³

¹ *Lobbying Disclosure Act*, 2 U.S.C § 1601(1995).

² *Foreign Agents Registration Act*, 22 USC § 611 (1938).

³ 22 USC § 611(c)(1).

11. FARA also includes a range of exemptions that minimise the regulatory burden of complying with the statute. Exemptions include for:

- diplomats, consular officers, officials of foreign governments and staff members of diplomatic or consular officers⁴
- persons solely engaged in private and non-political activities in furtherance of the bona fide trade or commerce of a foreign principal, activities not predominantly serving a foreign interest, or activities providing purely humanitarian assistance⁵
- persons engaging in bona fide religious, scholastic, academic, artistic or scientific pursuits or fine arts⁶
- persons whose foreign principal is a government of a foreign country, and the US President has deemed the defence of that foreign country as vital to the defence of the US⁷
- persons engaged as lawyers for a foreign principal provided that the purpose of legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial, criminal or civil law enforcement enquiries, investigations or proceedings,⁸ and
- persons engaged in lobbying activities and who have registered under the Lobbying Disclosure Act 1995.⁹

12. FARA requires persons under the scheme to file an initial registration statement with the Attorney-General, and supplementary statements every six months thereafter. Registrants must also submit any materials produced on behalf of the foreign principal and transmitted to two or more persons, within 48 hours of transmittal.¹⁰ Any such materials must include an identity statement disclosing that the materials are being distributed on behalf of a foreign principal and specifying the foreign individual or entity.¹¹ Current and historical registrations are published on a searchable public database maintained by the Department of Justice (DOJ).

Assessing the merit of FARA and its applicability in the Australian context

13. The Attorney-General's Department consulted closely with US counterparts to understand how FARA operates in practice. The Department has also considered US reviews of FARA, including the Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act (OIG Audit).¹²

14. A key challenge for FARA in achieving its transparency objective is the exemption that provides that persons and entities registered under the US Lobbying Disclosure Act are

⁴ 22 USC § 613 (a)-(c).

⁵ 22 USC § 613(d).

⁶ 22 USC § 613 (e).

⁷ 22 USC § 613 (f).

⁸ 22 USC § 613 (g).

⁹ 22 U.S.C § 613(h) and 2 U.S.C § 1601.

¹⁰ 22 U.S.C § 614(a).

¹¹ 22 U.S.C §614(b).

¹² The Department of Justice Office of the Inspector General, *Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act* (2016).

not required to also register with FARA. The Lobbying Disclosure Act is broad in its application which has the unintended consequence of some foreign agents registering with the Lobbying Disclosure Act and avoiding registration with FARA. The OIG Audit also finds that the Lobbying Disclosure Act has fewer regulatory requirements and necessitates the disclosure of less information than is required under FARA.¹³ The OIG Audit finds that the Lobbyists Disclosure Act exemption is a key reason for the decline in FARA registrations in the 1990's.¹⁴ Recognising this challenge, the Scheme proposed in the FITS Bill does not include an exemption for lobbyists registered on a Commonwealth or state and territory lobbyists register. The Department has consulted closely with the Department of Prime Minister and Cabinet who administer the Australian Government Lobbyists Register to minimise overlap between the different regulatory measures.

15. Another key challenge in enforcing FARA obligations is that there is no power to compel information from registrants or other persons in connection with the operation of the statute.¹⁵ FARA disclosures are made voluntarily and there are few tools available to US officials to enforce compliance. The evidentiary burden for criminal penalties is also high and makes criminal prosecutions difficult. To ensure the Australian Government has a range of measures to ensure compliance with Australia's Scheme, the FITS Bill includes a suite of administrative measures to encourage compliance, including through a power to compel the production of information and documents.¹⁶

16. The structure of registration obligations under FARA casts a wide net, capturing a very broad range of activities that might be undertaken on behalf of a foreign principal. To minimise the regulatory burden, FARA establishes a similarly wide range of exemptions. While both the registration requirements and exemptions interact to create a targeted measure, public awareness and understanding of registration requirements remains a challenge in the US. Drawing on this experience, the proposed Australian Scheme has been designed to target those activities and relationships that are of most significance to Australia's government and political systems and processes. Targeting registrable activities has a flow-on consequence of fewer exemptions being required. For example, FARA exempts bona fide scholastic and artistic pursuits. Australia's proposed scheme does not have these exemptions because activities only come within the scope of the Scheme when they are tied to influencing Australian political and governmental systems and processes. Therefore, in most instances, scholastic and artistic pursuits would not be registrable under the Scheme.

17. The OIG Audit states that encouraging timely and full submissions under FARA is a significant challenge for the FARA Unit, which can be linked to a lack of power to compel the production of information and documents, and to an onerous paper-file system (though the paper-file system is now being transitioned to an electronic system). To support the efficient and effective administration of Australia's Scheme, it is intended that it will be administered entirely electronically. As noted above, the Scheme will be supported by

¹³ Ibid, 18.

¹⁴ The Department of Justice Office of the Inspector General, *Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act*, September 2016.

¹⁵ The Department of Justice Office of the Inspector General, above n12.

¹⁶ Powers to obtain information and documents are contained in Division 3 of Part 4 of the FITS Bill.

appropriate enforcement powers, including the power to compel the production of information and documents. This will further assist with timely and full submissions to achieve the transparency objective of the Scheme.

18. FARA establishes filing fees in association with the scheme which have been criticised for being too high and for hindering the transparency objective of the scheme. Annual fees under FARA are US\$610. The charging and amount of fees has been contentious in the US for a number of years. Registrations declined sharply when fees were introduced in 1993, and a proposal to increase fees in 2010 was opposed by the US Government on the basis of concerns that this would deter registrations. In the 2016 OIG Audit, a formal cost-benefit analysis was recommended to ascertain the utility of retaining the FARA fee.¹⁷ While fees for Australia's proposed Scheme have not yet been determined, they are likely to be less than the fees charged under FARA and will be set with a view to supporting the transparency objective of the Scheme.

19. Like FARA, Australia's Scheme will create registration and regular reporting obligations aimed at providing transparency around the forms and sources of foreign influence in political and government systems and processes. Similarly, the Scheme has a range of exemptions that model FARA exemptions but that are specific to the Australian context. Like FARA, Australia's Scheme will create disclosure obligations with relation to communications activities – similar to disclosures made on election advertisements. Both measures also have a public-facing component that provides the public visibility of the forms and sources of foreign influence. A more detailed comparison of similarities and differences between the US FARA statute and Australia's proposed Scheme is at **Appendix B**.

The Australian context

20. The Scheme set out in the FITS Bill is targeted to the Australian context and responds to key concerns of the Australian government and public. Covert foreign interference and foreign influence by nation states are global realities which have the potential to cause immense harm to a country's sovereignty and economic prosperity. Australia is not immune to this threat. According to the Australian Security Intelligence Organisation (ASIO), the scale of foreign intelligence activities directed against Australia is unprecedented.¹⁸ ASIO judges that the threat is 'extensive, unrelenting and increasingly sophisticated'.¹⁹

21. According to ASIO's 2016-2017 Annual Report:

In addition to traditional espionage efforts to penetrate government, foreign intelligence services are targeting a range of Australian interests, including clandestine acquisition of intellectual property, science and technology, and commercially sensitive information. Foreign intelligence services are also using a wider range of techniques to obtain intelligence and clandestinely interfere in Australia's affairs, notably including covert influence operations in addition to the tried

¹⁷ Ibid.

¹⁸ Australian Intelligence Security Organisation, 'ASIO Annual Report', 2016-17, 54.

¹⁹ Ibid 23.

and tested human-enabled collection, technical collection, and exploitation of the Internet and information technology.²⁰

22. Activities undertaken by foreign principals, and those acting on their behalf, can cause significant harm to Australia's national interests and security. By wielding undisclosed influence on the Australian political landscape, foreign principals have the potential to undermine Australia's sovereignty and diminish public confidence in the integrity of political and government institutions.

23. Media reports highlight that undisclosed foreign influence is an international phenomenon that challenges democracies around the world. For example, foreign actors designed cyber operations and disinformation campaigns to influence the Brexit Referendum and the US election in 2016, and the French and United Kingdom elections in 2017. Combined with numerous reports of alleged covert foreign influence in Australian political processes, these events have sharply focussed the attention of the Australian Government on the threat of foreign interference and foreign influence within government and political processes.

24. Beyond those systems and processes that are inherently tied to Australian government and politics, there have been numerous reports alleging undisclosed foreign influence in the Australian community. This includes in Australia's academic institutions, and in communications materials. Foreign influence that can substantially affect public opinion is just as significant to Australia's national interests as influence that is more directly targeted at Australia's political and governmental processes.

25. The Australian Government consists of elected representatives whose role it is to represent their constituents. Reflecting the strength of Australia's democratic system of government, Australia has a robust and politically engaged civil-society. These characteristics of Australia's democracy and system of government mean that the Australian public is empowered to exert a real impact on Australia's governmental and political processes. Actions undertaken to influence the public's opinions and actions about Australia's governmental and political processes have the potential to have real and tangible consequences. It is essential that activities aimed at influencing the public fall within the scope of the scheme.

26. Activities covered by the FITS Bill include communications activity, which can be a powerful tool to influence government and public opinions about Australia's political and governmental processes. The Australian Government strongly upholds liberal democratic principles, including freedom of expression. Communication activities undertaken on behalf of foreign principals should however be transparent so that the Australian public and government decision-makers can assess interests being represented. This is particularly important during election and referendum periods.

27. Transparent communications activity is particularly important in the case of 'fake news' directed by foreign entities. In the context of Australia's proposed Scheme, fake news would refer to any false information disseminated or produced on behalf of a foreign principal under the guise of news reporting. Fake news has the potential to impact the

²⁰ Ibid, p45.

public's vote in a federal election, or to persuade government to change its policy position on an issue. Recognising this potential, the Scheme will require persons or entities to register if distributing information or materials on behalf of a foreign principal for the purpose of influencing an Australian political or governmental process. 'Information or materials' is defined broadly in the FITS Bill, and could include fake news content, whether disseminated via hard copy, online or through other platforms.

28. Representations to political candidates, members of parliament and their staff, and Commonwealth government officials, similarly have the ability to impact Australia's political and governmental processes. It is important that Australian decision-makers meeting with a person knows whether that person is representing a foreign interest, and the specifics of the interest that they represent. Without this safeguard, Australian decision-makers could unknowingly make decisions that affect Australian political and governmental systems and processes that are not wholly in Australia's national interest. Similarly, it is important that the Australian public know when such representations are made so that they can fully exercise the right to civil and political engagement, which underpins Australia's democratic system of government.

29. The FITS Bill recognises that certain sectors of the Australian population occupy positions of influence, with those positions providing unique access to sensitive information about current and recent Australian government priorities. For this reason, the Scheme will impose registration and reporting requirements on former Cabinet Ministers, former Ministers and Members of Parliament, and former senior Commonwealth public officials where they act on behalf of a foreign principal within a fixed period of ceasing their public role. There is a clear public interest in knowing when such persons enter into certain arrangements with foreign principals, and creating disclosure obligations to ensure transparency. The Scheme is a light touch approach that provides necessary transparency, rather than legislating for restrictions, or banning post-Ministerial employment by foreign principals.

30. The Scheme will provide transparency to all Australians about the forms and sources of foreign influence in Australia's government and political processes. Australia is a global country with strong and positive ties with nations around the world. However, the Australian Government recognises the difference between our international and domestic interests and seeks to ensure the integrity of Australia's sovereignty. The FITS Bill will achieve this by ensuring only Australian individuals and organisations can participate in Australian elections and affect their conduct and outcome. Australia highly values the strong and productive partnerships it has with countries around the world. While the Scheme creates registration and reporting obligation, it does not in any way prohibit the conduct of legitimate relationships, arrangements or activities. The requirements of the Scheme will apply equally to all registrants and does not target particular countries or diaspora communities.

31. The FITS Bill seeks to strike a balance between achieving its transparency purpose and minimising the regulatory impact of the Scheme. The Australian Government is committed to protecting the right to communicate and associate freely, provided it is lawful. The FITS Bill therefore targets those activities that have the greatest potential to impact Australia's governmental and political processes, to ensure other forms of relationships, activities and communications are not unnecessarily hindered. The FITS Bill also introduces a range of exemptions that ensure the Scheme is targeted to conduct of most relevance to

the Australian public and decision-makers in government. The exemptions are discussed in more detail in the following section of this submission.

3. The Foreign Influence Transparency Scheme

Requirement to Register

32. As noted above, the FITS Bill has been developed having regard to the US FARA model, and in response to the particular challenges posed by Australia's threat landscape. The application of the Scheme is limited by the activities included (and conversely excluded) as registrable activities. The activities that attract a requirement to register are:

- parliamentary lobbying²¹ – which involves lobbying members of Parliament or their staff
- general political lobbying²² – which involves lobbying a Commonwealth public official, department or agency, registered political party or a candidate in a federal election, for the purpose of influencing a process, decision or outcome
- communications activities²³ – which involves distributing information or materials on behalf of a foreign principal for the purpose of influencing a political or governmental process, decision or outcome, and
- donor activities²⁴ – which involves distributing money or things of value on behalf of a foreign principal for the purpose of influencing a political or governmental process, decision or outcome.

33. The FITS Bill also establishes registration and disclosure requirements for former Cabinet Ministers, Ministers, Members of Parliament and senior Commonwealth public officials.

34. Sections 20 to 23 of the FITS Bill outline the Scheme's registrable activities. Guidance on the application of these sections can be found in the Explanatory Memorandum to the FITS Bill.²⁵

²¹ The term parliamentary lobbying is defined at Section 10 of the FITS Bill as 'lobbying any one or more of the following persons: (a) a member of the Parliament; (b) a person employed under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*'.

²² The term 'general political lobbying' is defined at Section 10 of the FITS Bill as 'lobbying any one or more of the following: (a) a Commonwealth public official; (b) a Department, agency or authority of the Commonwealth; (c) a registered political party; (d) a candidate in a federal election; or than lobbying that is Parliamentary lobbying'.

²³ The term 'communications activity' is defined at subsection 13(1) of the FITS Bill to include where a person 'communicates or distributes information or material'.

²⁴ The term 'donor activities' is defined in Section 10 of the FITS Bill as occurring if '(a) the person disburses money or things of value; and (b) neither the person nor a recipient of the disbursement is required to disclose it under Division 4, 5 or 5A of Part XX of the *Commonwealth Electoral Act 1918*'.

²⁵ For further guidance on the application of sections 20 to 23 of the FITS Bill, see pages 49-58 of the Explanatory Memorandum http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6018_ems_2c964908-abee-447b-a96d-16401cf291fe/upload_pdf/655770.pdf;fileType=application%2Fpdf.

Parliamentary lobbying

35. Where a person undertakes parliamentary lobbying in Australia on behalf of a foreign government, then that person will be required to register under the scheme, unless appropriate relevant exemption applies. Parliamentary lobbying is an inherently political activity, the result of which can have significant implications for Australia's public policy. When parliamentary lobbying is undertaken on behalf of a foreign government, then it is in the public interest for this to be transparent.

36. If a person undertakes parliamentary lobbying in Australia on behalf of a foreign principal that is not a foreign government (ie a foreign public enterprise, foreign political organisation, foreign business or foreign individual), then the requirement to register only arises if that lobbying is done for the purpose of exerting political or governmental influence. Limiting the registration requirement to political or governmental influence targets the application of the Scheme, thereby minimising the scheme's regulatory impact and supporting its efficient administration while achieving the Scheme's transparency objectives.

General political lobbying

37. Where a person undertakes general political lobbying in Australia on behalf of any foreign principal, and the lobbying is undertaken for the purpose of political or governmental influence, then that person will be required to register unless a relevant exemption applies.

38. General political lobbying is defined to mean lobbying, that is not parliamentary lobbying, of any one, or more of the following:

- a Commonwealth public official
- a Department, agency or authority of the Commonwealth,
- a registered political party, or
- a candidate in a federal election.

39. The category 'general political lobbying' recognises that foreign influence of the categories of persons listed above has the ability to significantly affect decision-making about key Australian political and governmental processes. Registration under this category only applies if the lobbying is done for the purpose of political or governmental influence. This again targets the application of the Scheme to minimise its regulatory impact and support the Scheme's efficient administration.

Communications activities

When a person undertakes communications activities on behalf of any foreign principal, and that activity is done in Australia and for the purpose of political or governmental influence, then that person will be required to register under the scheme unless appropriate relevant exemption applies. Additionally, a person undertaking registrable communications activities will be required to include a disclosure identifying that the material was produced on behalf of the foreign principal and identifies who the foreign principal is on communications materials.²⁶ The disclosure requirement is comparable to the other disclosure requirements

²⁶ Section 38.

such as those that appear at the end of advertisements for political candidates and parties in state and federal elections.

Donor Activities

40. The Australian public has an expectation that only Australians should be able to influence Australian political elections, including through political donations.

41. Under the Scheme, a person undertakes donor activity on behalf of a foreign principal if the person disburses money or things of value, and does not have an obligation to disclose the disbursement under the *Commonwealth Electoral Act 1918*, which currently requires disclosure of political donations that reach or exceed \$13,500. The requirement to register under the Scheme only arises where the disbursement is undertaken for the purpose of political or governmental influence

42. The Scheme's donor registration and disclosure requirements are designed to complement the requirements of the Commonwealth Electoral Act. Its effect is that a person or entity that makes a donation for the purpose of influencing a political or governmental purpose, but who might otherwise not be subject to existing reporting mechanisms relating to political donations, will have to register and report under the Scheme.

Former members of Parliament, Ministers, Cabinet Ministers and senior Commonwealth public officials

43. Former members of Parliament, Ministers, Cabinet Ministers and senior Commonwealth public officials may also be required to register under the Scheme, if they are employed by, or act on behalf of, a foreign principal for a period after ceasing their public role.²⁷ Former Cabinet Ministers will be required to register if they are employed by or act in any capacity for a foreign principal in the three years following the cessation of their role. Former Ministers and Members of Parliament will similarly invoke a requirement to register for a period of three years, though only where they contribute the skills, knowledge, experience or contacts that have they have gained in the course of their former role. Similarly, the requirement to register for former senior Commonwealth officials only arises where they contribute skills, knowledge, experience or contacts but has a lesser registration period of eighteen months following their public role. The FITS Bill establishes more stringent registration and reporting requirements for such people, in recognition of the significant influence they can bring to bear on any activity undertaken on behalf of a foreign principal.

Exemptions

44. The Bill also introduces a range of exemptions to exclude activities not primarily directed at achieving foreign influence over political and government processes or which are already transparent in that there is no uncertainty about the foreign interests being represented. As a result, the exemptions minimise unnecessary regulatory burden. The exemptions ensure the Scheme is targeted to address the conduct of most relevance to the

²⁷ Sections 22-23.

Australian public and decision-makers in government. They have been developed with consideration of the US experience with FARA, and in consultation with Australian government agencies and stakeholders.

Diplomatic or consular or similar activities

45. The FITS Bill establishes an exemption for consular, diplomatic and United Nations officials performing the official duties of their roles.²⁸ Engagement by diplomatic and consular officials with the Australian Government is already transparent because there is no uncertainty about the foreign interest that these officials represent. Similarly, United Nations officials do not represent nor advance particular foreign interests but are instead concerned with the interests of the broader international community. This exemption is limited to where a person is performing their official duties, functions or roles.

Humanitarian aid or assistance

46. The FITS Bill exempts activities undertaken on behalf of a foreign principal for humanitarian aid or assistance.²⁹ This exemption applies where the conduct is undertaken for the sole purpose of humanitarian aid or assistance. Activities advanced solely for this purpose do not adversely impact upon Australia's national interests. This exemption recognises that the provision of humanitarian aid or assistance is a shared and collective endeavour of the international community

Legal advice and representation

47. The FITS Bill exempts activities undertaken on behalf of a foreign principal for the sole purpose of providing legal advice or legal representation.³⁰ The exemption only applies where the advice or representation is for judicial, criminal or civil law enforcement inquiries, investigations or proceedings.

Bona fide business pursuits

48. The FITS Bill exempts activities undertaken solely for bona fide business purposes in relation to contracts for goods and services.³¹ Foreign businesses or individuals often engage intermediaries to advance commercial pursuits that are not aimed at influencing Australia's political and governmental systems and processes. Requiring registration in these circumstances would not strengthen the transparency outcomes of the Scheme and would create a disproportionate regulatory burden. The exemption does not apply where the commercial negotiation of contracts relates to national security, defence or public infrastructure. There is a strong public interest in knowing when foreign businesses or individuals are using intermediaries to influence political or government processes about these matters.

²⁸ Section 26.

²⁹ Section 24.

³⁰ Section 25.

³¹ Section 29.

Religion

49. The FITS Bill exempts activities undertaken on behalf of a foreign government for the sole purpose of acting in good faith in accordance with the doctrines, tenets, beliefs or teachings of the particular religion of that foreign government.³² This exemption excludes activities of religious bodies that have a clear and transparent connection to a foreign government that is also the head of that religion.

News and press services

50. The FITS Bill exempts news reporting, presenting current affairs or expressing editorial content in news media.³³ The exemption only applies where the foreign principal is a business or individual. This means that privately-owned media and press services are not required to register for acting at the direction of a foreign business. The exemption for news and press services does not apply to State-owned news and press services. There is a public interest in knowing when news and press services are directed by a foreign government to influence Australian governmental and political processes.

Person operating under the same name as their foreign principal

51. The FITS Bill establishes an exemption that applies where a person operates under the same name as a foreign business or public enterprise.³⁴ For example, an Australian business with the same name as its international parent company is not required to register under the Scheme. In such instances, it is already clear that the Australian branch is representing the interests of the foreign business.

Employees of foreign businesses

52. The FITS Bill exempts individual employees of foreign businesses that undertake activities in the course of their employment.³⁵ Where an individual is clearly representing their employer, that individual should not be required to register under the Scheme. In such instances, it is already clear that an individual is representing the interests of their foreign employer.

³² Section 27.

³³ Section 28.

³⁴ Section 29.

³⁵ Section 29.

4. Complementing whole-of-government efforts to address foreign influence and foreign interference

53. The FITS Bill forms part of a larger package of legislative reforms and other government initiatives that will together protect Australia's sovereign interests. The FITS Bill adds to existing measures like lobbyist registers and codes of conduct, complements parallel reforms addressing the threats of espionage and foreign interference and reforms to ban foreign political donations, and strengthens law enforcement agencies' ability to respond with a range of offences and appropriate penalties.

Foreign Political Donations

54. The real and perceived integrity of Australia's electoral system and processes is integral to the strength and legitimacy of Australia's democratic system of government. There have long been calls for reform to Australia's political donation laws, reflecting the high level of public interest in ensuring transparency and accountability in Australia's government and political processes. Increasingly, there have been international cases of alleged foreign interference and influence in elections around the world. In Australia too, there have been numerous reports of foreign interests affecting Australia's domestic political landscape, including through foreign political donations. The real and perceived integrity of Australia's democratic systems and processes is integral to the stability of government and of the nation more broadly.

55. The impetus for reform was reflected in the *Joint Standing Committee on Electoral Matter's (JSCEM's) Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations*.³⁶ In that report, JSCEM recommended that donations be transparent, and that the issue of 'channelling' foreign political donations through intermediaries be considered by Government.

56. In response to this recommendation, the FITS Bill establishes a registration requirement for donor activities where they are undertaken on behalf of a foreign principal and for the purpose of political or government influence. This requirement addresses the JSCEM recommendation about 'channelling' foreign political donations and ensures that intermediaries engaged to make donations on behalf of a foreign entity will be required to register with the Scheme.

57. Recognising the importance of freedom of political communication, including through political donations, the FITS Bill has been scoped to limit registration requirements to donor activity undertaken on behalf of a foreign government, a foreign public enterprise or a foreign political organisation. Disbursing funds for foreign political organisations or foreign individuals will not give rise to a requirement to register with the Scheme.

³⁶ Joint Standing Committee on Electoral Matter, *Joint Standing Committee on Electoral Matter's (JCEM's) Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations* (2017).

58. The provisions in the FITS Bill have been developed in consultation with the Commonwealth Department of Finance who are leading the Australian Government's electoral reforms in relation to political donations, and which were introduced to Parliament on 7 December 2017. The *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017* makes a number of amendments to improve consistency of regulations regarding the conduct of elections and including reforms to the regulation of political donations. Significantly, the electoral reforms restrict the ability of foreign money to finance domestic election campaigns by prohibiting donations from foreign governments and state-owned enterprises, and by prohibiting political actors from using donations from foreign sources to fund reportable political expenditure. The FITS provisions regarding donor activity will complement, and not overlap with, the electoral funding and financial disclosure requirements under the *Commonwealth Electoral Act 1918*.

Lobbying Code of Conduct and Register of Lobbyists

59. Australia has a Lobbying Code of Conduct (the Code)³⁷ and a Register of Lobbyists (the Register)³⁸ administered by the Commonwealth Department of Prime Minister and Cabinet. The Register and Code are intended to ensure that contact between lobbyists and the Australian Government is conducted in accordance with public expectations of transparency, integrity and honesty. The Register is public-facing but only captures specific, defined lobbying activities that involve contact with Commonwealth Ministers and officials. The Scheme covers a broader range of relationships and activities that will be registered. Moreover the Code and the Register are not compulsory, nor are they supported by binding regulatory mechanisms. The Scheme introduces a range of enforcement mechanisms to support compliance and to strengthen the Scheme's transparency outcomes.

Ministerial Standards

60. The Statement of Ministerial Standards³⁹ sets out a range of expectations of Ministers and Parliamentary Secretaries. The standards reflect Australian expectations of Ministers and Parliamentary Secretaries and are intended to ensure public confidence in them and in government. The standards stipulate expectations on a range of matters including directorships, declarations of interests and the giving and receiving of gifts. In addition, the standards require that for 18 months after ceasing ministerial employment, a person cannot lobby, advocate or have business meetings with members of the government, Parliament, public service or defence force on any matters on which they have had dealings with as Minister in their last 18 months office. Ministers are also prohibited from taking personal advantage of information to which they had access to as a minister, where the information is not generally available to the public.

61. The FITS Scheme will bolster regulation and oversight provided by Ministerial Standards and provides additional transparency by making certain information publicly available. The Scheme is broader in the types of activities that it regulates, recognising the

³⁷ Department of Prime Minister and Cabinet, *Lobbying Code of Conduct* (2013)

³⁸ Department of Prime Minister and Cabinet, *Australian Government Lobbyists Register* (2013), <<http://lobbyists.pmc.gov.au/>>.

³⁹ Department of Prime Minister and Cabinet, *Statement of Ministerial Standards* (2015).

public interest in knowing about arrangements and activities undertaken on behalf of foreign principals. This is particularly the case for former Ministers, Members of Parliament and senior public office holders that, by virtue of their previous positions, have significant knowledge, skills and influence that can be brought to bear in Australian political and governmental processes.

62. Significantly, the Scheme has a range of enforcement measures that underpin the Scheme and that will support compliance.

National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017

63. The *National Security Legislation (Espionage and Foreign Interference) Bill 2017* (Espionage and Foreign Interference Bill) was introduced together with the FITS Bill on 7 December 2017. The Espionage and Foreign Interference Bill introduced comprehensive reforms to offences dealing with threats to national security, particularly those posed by foreign principals. The legislation:

- strengthens existing espionage offences
- introduces new foreign interference offences targeting covert, deceptive or threatening actions by foreign actors who intend to influence Australia's democratic or government processes or cause harm to Australia or its people
- reforms Commonwealth secrecy offences, ensuring they appropriately criminalise leaks of harmful information while also protecting freedom of speech
- introduces comprehensive new sabotage offences to protect critical infrastructure in the modern environment
- modernises and reform offences against government, including treason, to better protect Australia's defence and democracy
- introduces new theft of trade secrets offences to protect Australia from economic espionage by foreign government principals,
- introduces a new aggravated offence for providing false and misleading information in the context of security clearance processes, and
- ensures that law enforcement agencies have access to telecommunications interception powers to investigate these serious offences.

64. The FITS Bill complements the Espionage and Foreign Interference Bill by providing oversight and regulation of relationships and activities with foreign principals that affect Australia's political and governmental processes. The FITS Bill does not criminalise or prohibit lawful relationships and activities undertaken with foreign principals. It will instead provide transparency and oversight of foreign influence in Australian political and governmental processes. Where relationships and activities are, or become, illegitimate the Espionage and Foreign Interference Bill provides measures to prevent and address harm to Australia and Australia's people.

65. The FITS Bill offences will complement the options available to law enforcement and prosecuting agencies when considering malicious activities undertaken on behalf of a foreign principal.

5. Administration

Machinery of Government Change

67. On 18 July 2017, the Prime Minister announced that a new Home Affairs portfolio would be established by Government to bring together Australia's immigration, border protection, law enforcement and domestic security functions into a single portfolio. The Prime Minister also announced that the Attorney-General's portfolio would be expanded to include oversight and integrity functions and agencies including the Office of the Commonwealth Ombudsman, the Independent National Security Legislation Monitor, and the Inspector General of Intelligence and Security.

68. While the proposed Scheme will strengthen and support Australia's national security, the measure provides regulation, oversight and transparency of foreign influence in Australia's political and government processes. The Scheme will provide support for the maintenance and improvement of Australia's system of law and justice and its national security and emergency management systems.

69. The Scheme will be administered within the Attorney-General's portfolio, and the references to the Secretary and Minister respectively refer to the Secretary of the Attorney-General's Department and the Attorney-General.

The role of the Secretary and the Attorney-General

70. The FITS Bill provides the Secretary a range of powers and functions in connection with the administration of the Scheme.⁴⁰ The Secretary will have power to delegate functions to employees of the Attorney-General's Department.⁴¹ It is intended that some functions will be performed on behalf of the Secretary by AGD employees at the Senior Executive Service level or Executive Level.

71. Vesting powers in the Secretary, and appropriate delegation of powers, is consistent with administrative arrangements of a number of Commonwealth regulatory schemes, including the Register of Marriage Celebrants, and AusCheck. Delegation of powers is appropriate and commonplace across government to ensure efficient government administration.

72. The FITS Bill prescribes that only the Minister, being the Attorney-General, may make rules in connection with the Scheme, and on a limited range of matters.⁴² The types of matters where rule-making powers have been provided are those that comprise the administrative detail of the Scheme rather than the substantive policy that underlies it. Some examples of matters on which the Minister may make rules include: on charges in connection with the scheme; information required from registrants to fulfil registration obligations; specific arrangements to meet disclosure requirements in communication activities; and the Scheme information that will be made publicly available. Rule-making

⁴⁰ The Secretary's powers to obtain information and documents are contained in Division 3 of Part 4 of the FITS Bill.

⁴¹ Section 67.

⁴² Section 71.

powers help ensure that the Scheme remains future-proof by providing some limited flexibility. Delegated legislation will also assist in responding to issues that arise in the administration of the scheme.

73. The FITS Bill explicitly limits the rule-making power of the Minister to ensure that matters that are fundamental to the nature and operation of the Scheme cannot be altered through rules.⁴³ For example, the Minister cannot make a rule that creates an offence or civil penalty, or to provide powers of arrest or detention, or entry, search or seizure. The FITS Bill provides that these matters, and others like it, can only be dealt with by way of amendment to the Act.

Commencement of the Scheme

74. The FITS Bill provides that the Scheme will commence on a date to be fixed by Proclamation.⁴⁴ If a Proclamation has not been made within the period of 12 months beginning on the day the FITS Act receives Royal Assent, the Act will commence on the day after the end of that period.

75. The delayed commencement of the Scheme will support implementation, including development of an appropriate database and processes and procedures. It will also support communication and community outreach about the new registration requirements ahead of commencement.

Information – collection and security

76. The Scheme will necessarily require the collection of a range of information, including personal and commercial information. Some of this information will need to be made publicly available to give effect to the transparency purposes of the Scheme.

77. The collection and retention of information by the Scheme will be governed by the Australian Privacy Principles and the *Privacy Act 1988* (Privacy Act) and will be set out and published in a Privacy Impact Assessment. The Privacy Act requires regulated entities to adopt a risk-based approach to protecting personal information in their possession from misuse, interference or loss, as well as from unauthorised access, modification or disclosure.

78. Under the Privacy Act and Privacy Principles information can be shared with law enforcement, security and intelligence agencies where the use or disclosure of personal information is required or authorised by or under law, the use or disclosure of personal information is reasonably necessary for the enforcement of the criminal law, or there is a reasonable belief that use or disclosure is necessary to prevent or lessen a serious and imminent threat to life or health.

⁴³ Section 71.

⁴⁴ Section 2.

79. To provide additional protection to information collected, retained and shared under the Scheme, the FITS Bill provides the Secretary power to withhold information from the public register if commercially sensitive or security related information could be disclosed.⁴⁵

80. Administration of the Scheme will be supported by a database linked to an external-facing website. It is intended that website will be publicly accessible and will allow access to registrant and registration details including the registrant's name, the name of the foreign principal, and a description of the activities undertaken by the registrant on behalf of the foreign principal. The level of detail available to the public will be the minimum required to achieve the transparency purpose of the Scheme. The types of information available to the public will be subject to Parliamentary and public scrutiny, as the governing rules can only be made through legislative instruments.

81. The Scheme will also collect information that will be held in a database that is not publicly accessible. This may include documents provided by a registrant, including contracts or agreements with a foreign principal. The Secretary also has the power to request the production of documents by registrants or other persons,⁴⁶ and these documents will also be retained, but are not expected to be made available publicly.

82. It is intended that the administration of the Scheme will be entirely electronic. This decision recognises the difficulty that the US has had in managing and handling FARA paper-based registrations and documents.

83. Measures to protect information that is collected, stored and shared will be published in a Privacy Impact Assessment to be undertaken by the Department in consultation with the Office of the Australian Information Commissioner.

Charges and regulatory burden

84. The Bill provides that charges will be established for registration and registration renewal. Charges will contribute to cost-recovery and will be documented in a publicly accessible Cost-Recovery Implementation Statement. It is appropriate to charge registrants given the Scheme will incur costs to establish, administer and maintain. However, high fees may discourage registration under the Scheme and limit the Scheme's ability to meet its policy objective of providing transparency around forms and sources of foreign influence in Australia. The costs will therefore be set appropriately and to support the transparency objective of the Scheme.

85. Compliance with the Scheme will create a small regulatory burden for registrants. It is intended that registrations and registration renewals will in the first instance require minimal information with the view that the administering unit may request further detail or information from registrants if required. The regulatory and financial impact will also decrease in the second and subsequent years of the Scheme, once registration details have been lodged.

⁴⁵ Section 43.

⁴⁶ Sections 45 and 46 provide powers for the Secretary to obtain information to satisfy the Secretary as to whether a person is liable to register under the Scheme and to require the production of information relevant to the Scheme.

86. The FITS Bill requires that the Scheme and its costing model be reviewed shortly after the Scheme's commencement. This is intended to allow a period for the Scheme to be established and to operate, after which adjustments can be made to the Act, rules and administrative arrangements if necessary.

Enforcement

The FITS Bill provides a range of enforcement measures ensure that the consequence of non-compliance with the Scheme is commensurate to the level of culpability for non-compliance. Compliance measures could include letters of enquiry, and prompts to comply with the requirements of the Scheme.

87. The FITS Bill also includes criminal offences to both incentivise compliance with the Scheme and provide remedies in the event of non-compliance. The offences are tiered and have corresponding commensurate penalties. This ensures that penalties for non-compliance are not overly punitive and can be flexible to the level of culpability associated with the offending conduct.

88. Offences established by the FITS Bill, include for:

- undertaking registrable activities while not being registered
- failing to fulfil other responsibilities under the scheme, and
- providing false or misleading information or destroying records in connection with the scheme.

89. The maximum penalties for these offences range from 60 penalty units (\$12,600) to seven years imprisonment. These penalties signal the importance of transparency around activities undertaken on behalf of foreign principals that affect Australia's democratic and governmental processes.

Oversight

90. The FITS Bill requires annual reporting to the Australian Parliament at the end of each financial year.⁴⁷ Reporting will provide information on matters including the total number of registrants, the total number of foreign principals and their country of origin, and the nature of activities engaged in on behalf of foreign principals. Annual reports will be tabled in both Houses of Parliament, providing opportunity for both government and public scrutiny.

91. The FITS Bill also requires that the Minister with responsibility for administering the Scheme arrange a review within five years of its commencement.⁴⁸ The report of the review is required to be tabled in both Houses of Parliament.

⁴⁷ Section 69.

⁴⁸ Section 70.

Appendix A – Overview of the Foreign Influence Transparency Scheme

The Foreign Influence Transparency Scheme (the scheme) will require persons undertaking certain activities on behalf of a foreign principal to register and provide information about those activities.

How will the scheme operate?

Any person, business, organisation or other entity which undertakes certain activities on behalf of a foreign principal, or has an arrangement to undertake certain activities on behalf of a foreign principal, must register within a period of 14 days.

How much will it cost?

There will be a charge to register under the scheme and also to renew registration. The amount charged will be prescribed by regulations.

What activities will require registration under the scheme?

Registration will be required where:

- a person engages in *parliamentary lobbying* within Australia on behalf of a foreign government.
- a person engages in activities within Australia *for the purposes of influencing a political or governmental system or process*. These activities are:
 - parliamentary lobbying (on behalf of a foreign principal that **is not** a foreign government)
 - general political lobbying
 - communications activity, and
 - donor activity
- a *former Cabinet Minister* is employed by, or acts in any capacity for, a foreign principal in the **three years** following their role as a Cabinet Minister
- a *former Minister or MP* is employed by, or acts in any capacity for, a foreign principal in the **three years** following their role as a Minister or MP, where they contribute skills, knowledge, experience or contacts which have been gained through their former role
- a *former senior Commonwealth public official* is employed by, or acts in any capacity for, a foreign principal in the **eighteen months** following their public role, where they contribute skills, knowledge, experience or contacts which have been gained through their former role.

Will any exemptions apply?

Yes. A number of targeted exemptions will apply to certain categories of activities and persons.

These are:

- activities done for the sole purpose of, or which solely relate to, the provision of **humanitarian aid or assistance**

- activities done for the sole purpose of, or which solely relate to, the provision of **legal advice or legal representation**
- activities of **diplomats, consular and other officials** while performing official functions, duties and responsibilities of that role
- activities done for the sole purpose of, or which solely relate to, religious pursuits regarding the **religion** of a foreign government
- activities done for the sole purpose of, or which solely relate to, **reporting news**, presenting current affairs or expressing editorial content in news media (exemption only applies to private-owned media)
- certain **business and commercial activities**, including:
 - the negotiation or conclusion of contracts for the provision of goods or services, and
 - activities of employees within Australia of foreign businesses.

What will registrants be required to do?

Registrants will have a number of responsibilities under the scheme. These include:

- renewing registration on an annual basis if the person continues to act on behalf of the foreign principal
- promptly reporting material changes in circumstances
- promptly reporting when donor or communications activities are undertaken
- updating registration details when a federal election is called, and
- keeping records in relation to registration under the scheme.

These obligations are intended to facilitate the timely provision of current and accurate information to support continuous and effective transparency.

What penalties apply will apply for non-compliance?

A number of offences will apply for failing to register or renew registration, or for non-compliance with the obligations created by the scheme. The penalties range from 60 penalty units (for example, for failing to report a change in circumstance) through to seven years imprisonment (for example, for intentionally not registering under the scheme when required to do so).

The Secretary responsible for administering the scheme will also have the power to request and compel the provision of information and documents that is relevant to whether a person is required to register under the scheme.

Other matters

The scheme will commence within 12 months of the Bill being passed by the Parliament.

The Minister responsible for the scheme will be required to report to the Parliament on an annual basis regarding the operation of the scheme. The scheme must also be reviewed within 5 years of commencement.

Rules and regulations that will establish operational and administrative arrangements for the scheme will be developed once the Bill has been passed.

KEY TERMS

- *'Foreign principal'* – foreign government, foreign public enterprise, foreign political organisation, foreign business or an individual who is neither an Australian citizen nor a permanent Australian resident
- *'Purpose of political or governmental influence'* – activity for the purpose of influencing a federal vote, a federal government decision, a proceeding of Parliament, a process in relation to an MP, a political party or a candidate
- *'Parliamentary lobbying'* – lobbying a member of Parliament (MP) or a staffer of an MP
- *'General political lobbying'* – lobbying a Commonwealth official, department, agency or authority, a registered political party or a candidate in a federal election
- *'Communication activity'* – distributing information or materials
- *'Donor activity'* – distributing money or other things of value

Foreign Influence Transparency Scheme – when will a person be required to register?

	Parliamentary lobbying in Australian on behalf of foreign government (section 20)	Activities in Australia for the purpose of political or governmental influence (section 21)	Activities of former Cabinet Ministers (section 22)	Activities of former Ministers, MPs and senior Commonwealth officials (related to former role) (section 23)
Who has to register?	Any person	Any person	Any person who was a Cabinet Minister in the Australian Parliament in last <u>three years</u>	Any person who was: <ul style="list-style-type: none"> a Minister or MP in the Australian Parliament in last <u>three years</u>, or an agency head or deputy agency head in the Commonwealth in last <u>18 months</u>
Acting on behalf of who?	A foreign government	Any foreign principal	Any foreign principal (other than a foreign individual)	Any foreign principal (other than a foreign individual)
What types activities does this include?	Parliamentary lobbying	<ul style="list-style-type: none"> Parliamentary lobbying (not already covered by section 20) General political lobbying Communications activity Donor activity 	Any employment or activities	Any employment or activities undertaken on behalf of the foreign principal if the person contributes their skills, knowledge, experience or contacts gained through public role
For what purpose are activities being done?	For any purpose	For the purpose of influencing a political or governmental process	No purpose required	No purpose required

Where activities occur?	In Australia	In Australia	Anywhere in the world	Anywhere in the world
Exemptions? (depend on who the foreign principal is)	<ul style="list-style-type: none"> Activities for sole purpose of providing humanitarian aid Activities solely for provision of legal advice or representation Activities of diplomats, consular and other officials Religious pursuits (ie. Catholic priest representing Vatican) 	<ul style="list-style-type: none"> Activities for sole purpose of providing humanitarian aid Activities solely for provision of legal advice or representation Activities of diplomats, consular and other officials Religious pursuits (ie. Catholic priest representing Vatican) Activities of private news media (not State-owned) Certain private commercial and business pursuits, including negotiating and concluding contracts, and employees of foreign businesses 	<ul style="list-style-type: none"> Activities for sole purpose of providing humanitarian aid Activities solely for provision of legal advice or representation 	<ul style="list-style-type: none"> Activities for sole purpose of providing humanitarian aid Activities solely for provision of legal advice or representation

Appendix B – Overview of differences between FARA and FITS

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
SCOPE		
Application	<p>The scheme will require persons or entities undertaking certain activities on behalf of a foreign principal to register and provide information about those activities.</p> <p>Specifically, section 19 requires that :</p> <ul style="list-style-type: none"> any person who undertakes certain activities on behalf of a foreign principal, or enters a registrable arrangement with a foreign principal to undertake certain activities on behalf of a foreign principal, becomes liable to register under the scheme. <ul style="list-style-type: none"> Person is defined in section 3 to mean an individual, organisation or association, body corporate or politic, partnership or any body prescribed by the rules of the scheme. 	<p>Under 22 U.S.C. § 611, FARA applies to individuals, partnerships, associations, corporations, organisations or any other combination of individuals who:</p> <ul style="list-style-type: none"> act as an agent, representative, employee or servant of a foreign principal, or act under the order, request, control or direction of, or whose activities are directly or indirectly supervised, directed, controlled, financed or subsidised in whole or substantial part by a foreign principal (including a foreign country, person or organisation outside the US) and undertakes certain activities on behalf of the foreign principal within the US.
Activities to which the scheme applies	<p>Registration will be required where:</p> <ul style="list-style-type: none"> a person engages in parliamentary lobbying within Australia on behalf of a foreign government (section 20); a person engages in activities within Australia for the purposes of influencing a political or governmental system or process (section 21). These activities are: <ul style="list-style-type: none"> parliamentary lobbying (on behalf of a foreign principal that is not a foreign government) general political lobbying communications activity, and 	<p>Under 22 U.S.C. § 611 (c), the FARA applies to a person or entity who acts on behalf of a foreign principal within the US and:</p> <ul style="list-style-type: none"> engages in political activities, acts as a public relations counsel, publicity agent information service employee or political consultant, solicits, collects, disburses or dispenses contributions, loans, money or other things of value ,or makes representations to US government

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
	<ul style="list-style-type: none"> ○ donor activity; • a former Cabinet Minister is employed by, or acts in any capacity for, a foreign principal in the three years following their role as a Cabinet Minister (section 22); • a former Minister or member of Parliament is employed by, or acts in any capacity for, a foreign principal in the three years following their role as a Minister or MP, where they contribute skills, knowledge, experience or contacts which have been gained through their former role (section 23); • a former senior Commonwealth public official is employed by, or acts in any capacity for, a foreign principal in the eighteen months following their public role, where they contribute skills, knowledge, experience or contacts which have been gained through their former role (section 23). 	<p>agencies or officials.</p> <p>FARA also applies to the dissemination of informational materials, which are materials produced on behalf of the foreign principal and transmitted to two or more persons (22 U.S.C. § 614(a)).</p>
Definition of 'foreign principal'	<p>Defined in section 10 to mean:</p> <ul style="list-style-type: none"> • a foreign government • a foreign public enterprise • a foreign political organisation • a foreign business, and • a foreign individual who is neither an Australian citizen nor a permanent Australian resident. 	<p>Foreign principal is defined in 22 U.S.C. § 611(b) to include:</p> <ul style="list-style-type: none"> • a government of a foreign country and a foreign political, • a person outside the US, and • a partnership, association, corporation, organisation or any other combination of persons organised under the laws of or having its principal place of business in a foreign country.
Exemptions	<p>Division 4 outlines a number of targeted exemptions will apply to certain categories of activities and persons. These are:</p> <ul style="list-style-type: none"> • activities done for the sole purpose of, or which solely relate to, the provision of humanitarian aid or humanitarian assistance (section 24); 	<p>22 U.S.C § 613 sets out a number of exemptions to FARA registration requirements. These include for:</p> <ul style="list-style-type: none"> • diplomats, consular officers, officials of foreign governments and staff members of diplomatic or consular officers; • persons solely engaged in private and non-

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
	<ul style="list-style-type: none"> activities done for the sole purpose of, or which solely relate to, the provision of legal advice or legal representation (section 25); activities of diplomats, consular and UN officials while performing official functions, duties and responsibilities of that role (section 26); activities done for the sole purpose of, or which solely relate to, religious pursuits regarding the religion of a foreign government (section 27); activities done for the sole purpose of, or which solely relate to, reporting news, presenting current affairs or expressing editorial content in news media on behalf of a foreign business or individual (section 28); certain business and commercial activities (section 29), including: <ul style="list-style-type: none"> the negotiation or conclusion of contracts for the provision of goods or services, and activities of employees within Australia of foreign businesses. 	<p>political activities in furtherance of the bona fide trade or commerce of a foreign principal, activities not predominantly serving a foreign interest, or activities providing purely humanitarian assistance;</p> <ul style="list-style-type: none"> persons engaging in bona fide religious, scholastic, academic, artistic or scientific pursuits or of the fine arts; persons whose foreign principal is a government of a foreign country, and the US President has deemed the defence of that foreign country as vital to the defence of the US; persons engaged as lawyers for a foreign principal provided that the purpose of legal representation does not include attempts to influence or persuade agency personnel or officials other than in the course of judicial, criminal or civil law enforcement enquiries, investigations or proceedings; and persons engaged in lobbying activities and who have registered under the <i>Lobbying Disclosure Act 1995</i>.
REGISTRATION REQUIREMENTS		
When does registration occur?	A person or entity must register with the scheme within 14 days of undertaking certain activities or entering into an arrangement with a foreign principal to undertake activities (section 16).	Individuals or entities must file an initial registration statement with the Attorney-General within 10 days of becoming an agent of a foreign principal (22 U.S.C. § 612 (a)).
What	Section 16 outlines the requirement to register under the scheme	22 U.S.C. § 612(a)(1) outlines what must be

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
information is provided to the scheme when registering?	<p>within a certain period. This section also notes that an application to register must be in writing and in an approved form.</p> <p>Section 71 allows the Minister to make rules prescribing matters necessary or convenient for carrying out or giving effect to the Act. The rules will prescribe the information that a registrant must provide when registering such as the registrant's name and address, the name of the foreign principal and the types of activities that will be undertaken, as well as any necessary accompanying documents or information.</p>	<p>included on a person's registration statement. The statement must include details such as the registrant's name and addresses and the identity of the foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act.</p> <p>Details to be provided under the registration statement vary according to the nature of the agent and foreign principal relationship. If the registrant is acting on behalf of a foreign government, the registration statement should detail the relevant branch or agency with which the registrant engages, and the public official with whom the registrant deals. If the registrant is acting on behalf of a foreign political party, the registration statement should detail the party's principal address, political aim and the official with whom the registrant deals. If the registrant is acting on behalf of a foreign organisation that is not a foreign government or political party, the registration statement should detail any supervision, ownership, direction, control, financing or subsidising a foreign government or political party may exercise over such an organisation.</p> <p>Each partner, officer, director, associate, employee and agent of a registrant is required to file a short form registration statement unless he or she engages in no activities in furtherance of the interests of a registrant's foreign principal or unless</p>

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
		<p>the services he or she renders to the registrant are secretarial, clerical or in a related capacity. The short form registration must include:</p> <ul style="list-style-type: none"> • the applicant's name, date of birth, occupation, residential and business addresses, and nationalities • identities of foreign principals for which the applicant renders services in support of the primary registrant • identities of foreign principals for which the applicant renders services, separately than through the primary registrant • details of the services rendered must also be provided, and • the nature and amount of contributions, income, money or thing of value that the applicant has received from or given to the foreign principal.
Registration obligations	<p>Registrants will have a number of responsibilities under the scheme. These include:</p> <ul style="list-style-type: none"> • reporting material changes in circumstances within 14 days (section 34) • reporting when donor activity occurs within 14 days of the electoral donations threshold, or a multiple of that threshold being reached (section 35) • updating registration details within 14 days of a voting period for a federal election or for a designated vote (section 36) • reporting any registrable activity undertaken during a voting 	<p>There are a number of obligations on registrants under FARA. These include:</p> <ul style="list-style-type: none"> • providing supplementary registration statements every six months that provide details of the registrant's activities over that reporting period, any changes to contact details and the relationship between the individual and the foreign principal, any informational material disseminated on behalf of foreign principal and any funding received,

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
	<p>period for a federal election or designated vote within 7 days of the activity taking place (section 37)</p> <ul style="list-style-type: none"> making disclosure in communications activity about the foreign principal on whose behalf the communications activity is undertaken (section 38) renewing registration on an annual basis if the person continues to act on behalf of the foreign principal (section 39), and keeping records in relation to registration under the scheme (section 40). 	<p>contributed to or disbursed on behalf of foreign principals Registrants are required to submit supplementary registration statements within 30 days of every expiry (22 U.S.C. §612(b)),</p> <ul style="list-style-type: none"> including an identity statement on any informational material disseminated stating that the materials are being distributed on behalf of a foreign principal and specifying the foreign individual or entity (22 U.S.C. §614(b)), providing any informational materials must be submitted to the administering body within 48 hours of that material being transmitted (22 U.S.C. §614(a)), and keeping books of account and other records relating to his or her activities as an agent of a foreign principal (22 U.S.C. §615).
Publicly available information	<p>Certain information will be made publicly available on a website for each person/entity that is registered in relation to a foreign principal (section 43). The publicly available information will include:</p> <ul style="list-style-type: none"> the name of the registrant and the foreign principal for whom the registrant is acting a description of the kind of registrable activities the person undertakes on behalf of the foreign principal, and any other information that is prescribed by the scheme's rules. <p>Certain information may not be made public if the information is</p>	<p>A comprehensive range of information is publicly available on a public-facing database for each person/entity registered in relation to a foreign principal⁴⁹.</p> <p>The information available on the website includes the full registration statement, plus any additional documentation that is provided by the registrant.</p>

⁴⁹ <https://www.fara.gov/quick-search.html>

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
	commercially sensitive, affects national security, or has been prescribed by the rules of the scheme as being exempt from being made available (subsection 43(2)).	
ENFORCEMENT		
Powers	<p>The Secretary will have the power to request and compel the provision of information and documents that is relevant to whether a person is required to register under the scheme (section 45).</p> <p>The Secretary will be able to compel such information or documents from persons who the Secretary reasonably suspects may be liable to register under the scheme and have not done so, and from persons (whether or not a registrant) who are reasonably believed to have information or documents relevant to the operation of the scheme (section 46).</p>	<p>Limited enforcement powers are available. The administering unit primarily seeks to ensure compliance with FARA requirements on a voluntary basis and send letters of inquiry advising a person of the existence of FARA and their possible obligations.</p> <p>The administering unit can also conduct compliance inspections, which cover every aspect of a registrant's relationship with a foreign principal including financial records, contracts and all correspondence between the registrant and the foreign principal (22 U.S.C. §615). However, compliance with inspections cannot be compelled.</p> <p>FARA does not otherwise have any power to compel documents or information.</p>
Offences and penalties	<p>Part 5 of the Bill contains a range of offences which provide a meaningful and serious deterrent for non-compliance with the scheme, and provide the scheme with sufficient means to pursue a person who is deliberately undermining the transparency objective of the scheme. These include: These include offences for:</p> <ul style="list-style-type: none"> failing to apply for, or maintain registration under the scheme (section 57) 	<p>There are a number of criminal penalties under 22 U.S.C. §618 that apply in relation to FARA. It is an offence under the Act to:</p> <ul style="list-style-type: none"> wilfully violate any provision of the Act, or any regulations under it wilfully make a false or misleading statement of a material fact on a registration statement

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
	<ul style="list-style-type: none"> • failing to fulfil responsibilities under the scheme (section 58) • failing to comply with a notice from the Secretary requiring information (section 59) • providing false or misleading information or documents (section 60) • destroying, damaging, concealing or preventing a registrant from keeping records required to be kept under the scheme (section 61). <p>The penalties range from 60 penalty units (for example, for failing to report a material change in circumstances), through to seven years imprisonment (for example, for intentionally omitting to register under the scheme when required to do so).</p>	<p>or any other document provided under the Act</p> <ul style="list-style-type: none"> • wilfully omit a material fact or material document provided under the Act. <p>Depending on the circumstances in which the offence is committed, penalties range from a fine of US\$5,000 or a term of imprisonment of six months (or both) to a fine of US\$10, 000 or a maximum term of five years imprisonment.</p> <p>It is also an offence for a public official of the US in the executive, legislative or judicial branch of the Government, or in any agency of the US to act on behalf of a foreign principal without registering. This offence attracts a penalty of a maximum fine of US\$10,000 or a maximum term of imprisonment of two years (or both).</p>
COSTS		
Fees	<p>The scheme will be partially cost recovered – it is not intended that any amount charged will generate revenue. The Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017 provides legislative authority to impose charges under the scheme.</p> <p>The amount that will be charged has not yet been determined and will be set in accordance with the Australian Government Charging Framework.</p>	Both initial registrations and supplemental registration statements incur a filing fee of US\$305.
ADMINISTRATION		

	Foreign Influence Transparency Scheme (the scheme)	Foreign Agents Registration Act (FARA)
Which agency administers the scheme?	Attorney-General's Department	The US Department of Justice

Appendix C – Overview of Commonwealth, state and territory lobbying registers

Jurisdiction ⁵⁰	Western Australia	New South Wales	Queensland	Victoria	South Australia	Tasmania	Australian Capital Territory	Commonwealth
When introduced	March 2007	October 2008	March 2009	August 2009	December 2009	August 2009	August 2014	July 2008
Number of registered lobbyists⁵¹	111 entities	129 active entities, 50 inactive entities, 23 cancelled, 21 entities on the Watch List ⁵²	313 individuals, 165 entities	114 entities	66 entities, 5 inactive entities	41 entities	6 individuals, 31 entities	249 entities, 569 individuals
Type of regulatory regime	Legislation – <i>Integrity (Lobbyist) Act 2016</i> <i>Code of Conduct for Registrants and Lobbyists</i>	Legislation – <i>Lobbying of Government Officials Act 2011</i> <i>Lobbyists Code of Conduct (Regulation 2014)</i>	Legislation – <i>Integrity Act 2009</i> <i>Lobbyists Code of Conduct</i>	Regulation – <i>Victorian Government Professional Lobbyist Code of Conduct, 2013</i>	Legislation – <i>Lobbyists Act 2015</i> ⁵³ <i>Lobbyist Code of Conduct (2014)</i>	Regulation – <i>Tasmanian Government Lobbying Code of Conduct</i>	Regulation – <i>ACT Lobbying Code of Conduct (2014)</i> <i>ACT Lobbyist Regulation Guidelines (2014)</i>	Regulation – <i>Lobbying Code of Conduct</i>
Definition of lobbying / lobbying activity	Lobbying activity means communicating with a government representative for the purpose of influencing, whether directly or indirectly, State government	Communicating with an official—in person, in writing or by telephone or other electronic means—for the purpose of representing the interests of another person or a body in	Contact with a government representative in an effort to influence state or local government decision-making, including - the making / development /	Any contact (including telephone contact, electronic mail contact, written mail contact, or face to face meetings) with a Government Representative in	A person will be taken to engage in lobbying if the person, for money or other valuable consideration, communicates with a public official (in person, in writing or by telephone or other electronic means) on behalf of a third party	Communications with a Government representative in an effort to influence Government decision-making, including the making or	The website for the ACT Legislative Assembly website (which provides public access to the ACT Register for Lobbyists) defines	“Lobbying activities” means communications with a Government representative in an effort to influence Government decision-making, including the making or amendment of

⁵⁰ There is no dedicated Lobbying Register or Lobbyists Code of Conduct for the Northern Territory. The NT Ministerial Standards are contained in Appendix A of the NT Cabinet Handbook. Clause 6.6 of the Standards notes that Ministers must handle lobbying by business and other parties carefully and ensure their personal interests do not clash with, or override their public duties. Clause 7.3 deals with post-ministerial employment, including a prohibition that a Minister must not take up employment or act as a consultant within six months of leaving office where such employment/consultancy relates to any of the Ministers portfolio responsibilities. However, there is no specific prohibition on post-ministerial lobbying.

⁵¹ As at 19 December 2017.

⁵² The Lobbyists Watch List is established under section 12 of the Lobbying of Government Officials Act (NSW). It is a list maintained by the NSW Electoral Commission that contains the names and other identifying details of any lobbyist who the Electoral Commission determines should be placed on the Watch List because of contraventions of the Lobbyists Code of Conduct or of the Lobbying of Government Officials Act.

⁵³ Prior to legislation being introduced in 2015, the SA Lobbying Code of Conduct, introduced in December 2009, regulated lobbyists.

Jurisdiction ⁵⁰	Western Australia	New South Wales	Queensland	Victoria	South Australia	Tasmania	Australian Capital Territory	Commonwealth
	<p>decision-making (Lobbying Act, s 4(1)).</p> <p>Lobbying activities do not have to be undertaken for any commission, payment or other reward (whether pecuniary or otherwise) (Lobbying Act, s 4(2))</p>	<p>relation to:</p> <ul style="list-style-type: none"> - legislation or proposed legislation, or a government decision, or policy, or a proposed government decision or policy, - a planning application, or - the exercise by the official of the official's official functions. (Lobbying Act, s 4) 	<ul style="list-style-type: none"> - amendment of legislation, government policy or program - the awarding of a government contract or grant - the allocation of funding; and - the making of a decision about planning or giving of a development approval (Lobbying Act, s 42(1)(a)). <p>Contact with Opposition representative in an effort to influence Opposition decision-making, including the:</p> <ul style="list-style-type: none"> - making/amendment of legislation - development/ amendment of an Opposition policy or program; and - the Opposition's position or view in relation to State or local government decision-making (Lobbying Act, s 42(1)(b)). 	<p>an effort to influence Government decision-making, including the making or amendment of legislation, the development or amendment of a Government policy or program, the awarding of a Government contract or grant or the allocation of funding. (Victorian Government Professional Lobbyist Code of Conduct, clause 3.3)</p>	<p>for the purpose of influencing the outcome of—</p> <ul style="list-style-type: none"> - legislation, or a government decision or policy, whether existing or proposed; or - an application for any approval, consent, licence, permit, exemption or other authorisation or entitlement under any Act or law of this State; or - the awarding of a contract or grant or the allocation of funding; or - any other exercise of functions/power by the official (Lobbyists Act 2015, s 4) 	<p>amendment of legislation, the development or amendment of a Government policy or program, the awarding of a Government contract or grant or the allocation of funding. (Lobbying Code of Conduct, clause 3)</p>	<p>lobbying activity as any oral or written (including electronic) communication with a public official to influence legislation or policy, regulatory or administrative decisions of the public official or another public official⁵⁴.</p>	<p>legislation, the development or amendment of a Government policy or program, the awarding of a Government contract or grant or the allocation of funding. (Lobbying Code of Conduct, clause 3)</p>

⁵⁴ <https://www.parliament.act.gov.au/act-register-of-lobbyists/act-register-of-lobbyists5> - accessed 20 December 2017.

Jurisdiction ⁵⁰	Western Australia	New South Wales	Queensland	Victoria	South Australia	Tasmania	Australian Capital Territory	Commonwealth
Definition of lobbyist	<p>A person who is listed in the register in respect of a registrant (Lobbying Act, s 3)</p> <p>Information provided on the public website that provides access to the WA Register for Lobbyists defines a lobbyist as a person or organisation that represents the interests of a third party to the government⁵⁵.</p>	<p>A third-party lobbyist or any other individual or body that lobbies Government officials (including an individual engaged to undertake lobbying for a third-party lobbyist) (Lobbying of Government Officials Act, s 3)</p> <p>A third-party lobbyist is defined as an individual or body carrying out the business (generally for money or other valuable consideration) of lobbying Government officials on behalf of another individual or body (Lobbying of Government Officials Act, s 3)</p>	<p>An entity that carries out a lobbying activity for a third party client or whose employees or contractors who carry out a lobbying activity for a third party client (Lobbying Act, s 41(1)).</p>	<p>Any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client. (Victorian Government Professional Lobbyist Code of Conduct clause 3.4)</p>	<p>Not specifically defined</p>	<p>Any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client. There are a number of exemptions to this definition. (Lobbying Code of Conduct, clause 3)</p>	<p>The ACT Legislative Assembly website (which provides public access to the ACT Register for Lobbyists) defines a lobbyist as any person, company or organisation who conducts lobbying activities on behalf of a third party, or whose employees or other personnel conduct lobbying activities on behalf of a third party, where such lobbying activities are ordinarily carried out in the expectation of receiving direct or indirect financial reward or other valuable consideration whether or not the amount thereof is ascertainable at the time such</p>	<p>Lobbyist means any person, company or organisation who conducts lobbying activities on behalf of a third party client or whose employees conduct lobbying activities on behalf of a third party client. (Lobbying Code of Conduct, clause 3)</p>

⁵⁵ <https://www.lobbyists.wa.gov.au/> - accessed on 20 December 2017.

Jurisdiction ⁵⁰	Western Australia	New South Wales	Queensland	Victoria	South Australia	Tasmania	Australian Capital Territory	Commonwealth
							activities are conducted ⁵⁶ .	
Offences/prohibited conduct (including penalties)	<p>A person who is in the business of lobbying must not undertake lobbying activities unless they are accredited as a lobbyist (Lobbying Act, s 8).</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of \$10,000 <p>Agreements to receive success fees are prohibited (excludes money received in course of employment) (Lobbying Act, s 21)</p> <ul style="list-style-type: none"> - No civil or criminal liability <p>Offence to supply false or misleading information (Lobbying Act, s 24).</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of \$10,000. 	<p>Ban on success fees for lobbying (Lobbying Act, s 15)</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of 500 penalty units (corporation) or 200 penalty units (individual)⁵⁷ <p>Former Ministers and former parliamentary secretaries are prohibited from lobbying in relation to a matter that was dealt with by the former Minister or parliamentary secretary for a period of 18 months (Lobbying Act s 18).</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of 200 penalty units <p>Under the Code of Conduct, lobbying is prohibited unless third party lobbyists are registered on the</p>	<p>Lobbying by unregistered entity prohibited (Lobbying Act, s 71).</p> <ul style="list-style-type: none"> - There is no penalty prescribed for this conduct under the Act. <p>Success fee prohibited (Lobbying Act, s 69)</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of 200 penalty units⁵⁸ <p>Failure to comply with the Code of Conduct</p> <ul style="list-style-type: none"> - Penalty can include refusing an application for registration, or cancelling a lobbyist's registration, or issuing a warning, or suspension 	<p>A lobbyist wishing to engage in lobbying activity shall apply to have their details recorded in the Register of Lobbyists (Code of Conduct, clause 5.2).</p> <ul style="list-style-type: none"> - Penalty for breach is removal from register <p>Prohibition on success fees (Code of Conduct, clause 7)</p> <ul style="list-style-type: none"> - Penalty for breach is removal from registrar 	<p>Lobbyists to be registered (Lobbying Act, s 5)</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of \$150,000 (corporation), or a fine of \$30,000 or 2 years imprisonment (individual) <p>Registered person must notify the Chief Executive⁵⁹ of any new agreement, offence that disentitles registration or of a change in registration details (Lobbying Act, s 11).</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of \$5,000. <p>Success fees prohibited (Lobbying Act, s 14)</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of \$150,000 (corporation) or a fine of \$30,000 or 2 years imprisonment (individual) 	<p>A lobbyist wishing to conduct lobbying activities with a Government representative must have his or her details recorded in the Register of Lobbyists – Code of Conduct</p> <p>For breaching the code of conduct, the – penalty is removal from the register (at discretion of Secretary of Premier and Cabinet).</p>	<p>'A lobbyist shall take all reasonable steps to ensure that their details as recorded on the ACT Register of Lobbyists are and remain correct from time to time (Code of Conduct, clause 3(f)).</p> <p>A lobbyist who is sentenced to a term of imprisonment of 30 months or more, or is convicted of an offence, one element of which involves dishonesty, or becomes/commences to act as a member of a</p>	<p>A Government representative shall not knowingly and intentionally be a party to lobbying activities by:</p> <ul style="list-style-type: none"> - a lobbyist who is not on the Register of Lobbyists; - an employee of a lobbyist, or a contractor or person engaged by a lobbyist to carry out lobbying activities whose name does not appear in the lobbyist's details noted on the Register of Lobbyists in connection with the lobbyist; or - a lobbyist or an employee of a lobbyist, or a contractor or person engaged by a lobbyist to

⁵⁶ <https://www.parliament.act.gov.au/act-register-of-lobbyists/act-register-of-lobbyists5> - accessed on 20 December 2017.

⁵⁷ Penalty units under NSW Law are prescribed under section 17 of the *Crimes (Sentencing Procedure) Act*. Currently one penalty unit is equal to \$110.

⁵⁸ Penalty units under QLD Law may be prescribed in regulation under section 5A of the *Penalties and Sentencing Act 1992*. Currently one penalty unit is equal to \$126.15.

⁵⁹ Chief Executive of the Department of Premier and Cabinet, who is responsible for administering the Lobbying Register.

Jurisdiction ⁵⁰	Western Australia	New South Wales	Queensland	Victoria	South Australia	Tasmania	Australian Capital Territory	Commonwealth
		<p>Register for Third Party Lobbyists</p> <ul style="list-style-type: none"> - Penalty for contravention of code of conduct is deregistration and/or placement on the Lobbyists Watch List. 			<p>False or misleading information (Lobbying Act, s 17)</p> <ul style="list-style-type: none"> - Maximum penalty is a fine of \$10,000 		<p>federal, state or territory political party executive or administrative committee will cease engaging in lobbying activities (Code of Conduct, clause 3(o))</p> <p>For breaching the code of conduct, the penalty is removal from the register.</p>	<p>carry out lobbying activities who, in the opinion of the Government representative, has failed to observe any of the requirements of clause 8(1)(e). These are informing the Government representative that they are lobbyists or persons engaged by lobbyists, advising whether they are currently listed on the Register of Lobbyists, the name of their relevant client or clients, and the nature of the matter that their clients wish to raise.</p> <p>A Government representative who becomes aware of a breach of this Code by a lobbyist shall report details of the breach to the Secretary.</p>

Jurisdiction⁵⁰	Western Australia	New South Wales	Queensland	Victoria	South Australia	Tasmania	Australian Capital Territory	Commonwealth
Administered by	Public Sector Commissioner	NSW Electoral Commission	Queensland Integrity Commissioner	Public Sector Standards Commissioner	Public Sector Standards Commissioner	Chief Executive, Department of Premier and Cabinet	ACT Legislative Assembly	Secretary of the Department of the Prime Minister and Cabinet
Enforcement	Financial penalty (as per offences in ss 8 and 24 of Lobbying Act)	Deregistration, Watch List, financial penalty (as per offences in ss 15 and 18 of Lobbying Act)	Financial penalty (as per s 69 of the Lobbying Act), cancellation of registration or removal from register	Removal from register	Financial penalty (as per offences in ss 5, 11 and 17 of the Lobbying Act)	Removal from register	Removal from register	Removal from register
Ethics	Code of Conduct contains behavioural standards but does not impose civil/criminal liability	Code of Conduct contains behavioural standards with which all lobbyists, not just those who are registered, must comply	Code of Conduct stipulates strict behavioural standards	Code of Conduct contains requirements for lobbyists. The penalty for breaching the code is removal from the register.	Code of Conduct contains penalty for non-compliance, which is – refusal to register or deregistration.	Code of conduct contains requirements for lobbyists. The penalty for breaching the code is removal from the register.	Breaches of Code of Conduct may result in removal from register	Code of Conduct contains behavioural standards for registered lobbyists. The penalty for breaching the code is removal from the register.
Success fees⁶⁰	Banned, no civil/criminal liability but may be recovered by government	Banned—financial penalties apply (see above) Success fees to be forfeited to government.	Banned—financial penalties apply (see above) Success fees to be forfeited to government.	Banned Penalty – removal from register (subject to discretion of Commissioner)	Banned - financial penalty (see above)	No statement on success fees	No statement on success fees	No regulation at Commonwealth level
Post-ministerial employment as lobbyist	12-month prohibition on State MPs and Senators, senior public sector executive, office holders or positions prescribed by the regulations	18-month prohibition on Ministers or Parliamentary secretaries	2-year prohibition on senior government representative or Opposition representative	18-month prohibition – Minister or Cabinet Secretary 12 months prohibition – Parliamentary Secretary, Executives, Ministerial Officers	2 year prohibition on Ministers 12 month prohibition on Parliamentary Secretaries, members of the South Australian Executive Service, and persons engaged as a member of a Minister's personal staff	12-month prohibition on Ministers Parliamentary Secretaries and persons employed as a Head of Agency	18 month prohibition on former members of the Legislative Assembly 12 month prohibition on ministerial staff and heads of service, senior public servants at Director	18-month prohibition on Ministers or Parliamentary Secretaries 12 month prohibition on persons employed in Officer of Ministers or Parliamentary Secretaries in certain positions 12 month prohibition on persons engaged as

⁶⁰ Success fees are an amount of money (or other valuable consideration) that is paid to the lobbyist. However, the payment of the fee is contingent on the outcome of the lobbying being resolved in favour of the client (such as a contract being awarded, a certain decision being made or legislation being changed).

Jurisdiction⁵⁰	Western Australia	New South Wales	Queensland	Victoria	South Australia	Tasmania	Australian Capital Territory	Commonwealth
							General /executive level	Agency Heads or in the Senior Executive Service.