OFFICIAL

PJCIS private briefing – responses to questions on notice

Which category of foreign principal poses the most common or prominent risk out of the four categories?

- **Foreign principal** is defined in section 10 of the *Foreign Influence Transparency Scheme Act 2018* (the FITS Act) as meaning:
 - o foreign governments
 - o foreign political organisations
 - o foreign government related entities, and
 - o foreign government related individuals.

• Registrations:

- As of 12 November 2021, most activities registered under the Scheme were undertaken on behalf of a foreign principal who was a foreign government related entity (74%).
- 15% were undertaken on behalf of a foreign government, 10% were undertaken on behalf of a foreign political organisation, and 1% were undertaken on behalf of a foreign government related individual.
- Transparency risks: While influence activities on behalf of any of the four categories of foreign
 principal can pose transparency risks, the department's experience is that there are greater
 transparency challenges with foreign government related entities in particular, as well as
 foreign government related individuals, because their status as a foreign principal can be more
 difficult to determine.
 - This is because their status as a foreign principal is defined by the nature of their relationship to a foreign government or foreign political organisation and that relationship can be obscure or obfuscated.
 - The department's enforcement activities have been focused primarily on foreign government related entities.

Will changing the definition of foreign principal have a chilling effect on individuals engaging in political activity, for example, through social media? How does the Act deal now with people who are simply expressing political views online?

- The department does not consider that potential changes to the definition of foreign principal would have a chilling effect on the expression of political views, including in social media.
- Under the FITS Act a person only has to register if they are undertaking an activity 'on behalf of' a foreign principal.
 - This means undertaking an activity under an arrangement with, in the service of, or under the order, request or direction of a foreign principal.
- The Act seeks to ensure that when certain activities are undertaken on behalf of a foreign principal, the Australian public and government decision makers are aware of the source of the message and its potential political objectives.
 - This ensures the sources and interests behind activities are transparent, which promotes freedom of expression and participation in public affairs by encouraging and promoting a transparent political system.
 - It is not the intention of the FITS Act to deter public engagement in political activity or expression.
- If there were any concerns about the extent to which the expression of political views constitutes registrable activity, consideration could be given to the scope of the definition of communications activities under the FITS Act and any exemptions.

Identification

Research and

initial

assessment

of

application

to the Act

AGD identifies a particular case for assessment.

Is the person/entity capable of being a foreign government related individual (FGRI) or entity (FGRE)?

- Is the relevant person/entity a 'person'?
- Who is the foreign principal?
- What is the nature of their relationship?

If YES, and if there is enough information available, the department assesses whether a provisional transparency notice (PTN) could be issued. Conducting an assessment.

Is the entity or person undertaking registrable activities (Div 3)?

- Are the activities registrable (s 21)?
- Who is the relevant foreign principal (s 10)?
- Are the activities being undertaken on behalf of a foreign principal (s s11)?

If YES, and if there is enough information available 4. Conducting an assessment.

This stage involves researching using open source material. In some cases, more information will be required 3. Seeking information externally

Seeking information

Conducting

assessment

as to

whether to

issue an

information-

gathering

notice or a

provisional

transparency

notice

AGD may request information or commission research within or outside Government.

person/entity meets the definition of FGRE or FGRI and therefore whether a provisional transparency notice could be issued.

AGD will prepare an assessment outlining how the

If further information is required to make that assessment, AGD can prepare an assessment outlining whether an information-gathering notice under section 46 could be issued.

Can the Secretary issue a notice requesting information relevant to the Scheme (s 46)?

- Are there grounds to reasonably believe that the person or entity has information relevant to the operation of the Scheme (s 46(1))?
- What documents help determine whether the entity or person is a foreign government related entity or individual?

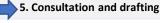
AGD will prepare an assessment outlining whether the entity/person is undertaking registrable activities.

If there are obligations, AGD will ask the entity to consider their registration obligations.

If further information is required, AGD can prepare an assessment outlining whether an information-gathering notice under section 45 could be issued.

Can the Secretary issue an information gathering notice requesting information as to whether the person or entity is liable to register under the Scheme (s 45)?

- Are there grounds to reasonably suspect the individual/entity may have registration obligations (s 45(1))?
- What documents would help determine whether the entity or individual is undertaking registrable activities on behalf of a foreign principal?



5. Consultation and drafting

Consultation and drafting

AGD consults with relevant Government stakeholders about the potential to issue an informationgathering notice or, if relevant, a provisional transparency notice. AGD drafts the notices and, if relevant, the lists of documents the person/entity is required to provide.

Secretary's consideration

The Secretary makes a decision as to whether to issue the notice, based on the assessment.

Issue

If a PTN is issued declaring the entity/person to be an FGRE/FGRI, the entity has 14 days to make a submission (14C). The Secretary can revoke the PTN within 28 days. If not, the notice becomes a final transparency notice.

If section 46 notices are issued, the entity has at least 14 days to provide information. AGD assesses whether the information supports an assessment as to whether a PTN can be issued.

If YES 4. Conducting an assessment

If section 45 notices are issued, the entity/individual has at least 14 days to provide information.

AGD assesses the information provided, and contacts the entity or individual to advise them of whether or not they have registration obligations. If necessary, AGD considers compliance mechanisms.

Months 2 and 3

Months 3 - 5

Month 6

Month 7+