

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

OPC drafter to complete	
1. Do any of these amendments need a message? (See H of R Practice, sixth ed, pp. 423-427, and OGC advice.) If yes: <ul style="list-style-type: none"> • List relevant amendments— • Prepare message advice (see DD 4.9) • Give a copy of the amendments and the message advice to the Legislation area. 	No
2. Are these amendments for consideration by the Senate? If yes, go on to question 3.	No
3. Should any of these amendments be moved in the Senate as requests? (See OGC advice) If yes: <ul style="list-style-type: none"> • List relevant amendments— • Prepare section 53 advice and fax to relevant Ministers, the PLO in the Senate and the PLO in the House of Reps (see DD 4.9); • Give a copy of the request advice to the Legislation area with the copy of the amendments (see question 1). 	No

Foreign Influence Transparency Scheme Bill 2017

(Government)

- (1) Clause 3, page 2 (line 16), omit “, foreign businesses”.
[definition of foreign principal]
- (2) Clause 4, page 3 (line 1), omit “senior Commonwealth”, substitute “designated”.
[designated position holder]
- (3) Clause 8, page 5 (line 16), after “department”, insert “, statutory office-holder”.
[application to statutory office-holders]
- (4) Page 5 (after line 21), at the end of Division 1, add:

9A Relationship of this Act to certain privileges and immunities

Parliamentary privilege

- (1) This Act does not affect the law relating to the powers, privileges and immunities of any of the following:
- (a) each House of the Parliament;
 - (b) the members of each House of the Parliament;
 - (c) the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

Legal professional privilege

- (2) This Act does not affect the law relating to legal professional privilege.

Effect on Secretary's power to obtain information and documents

- (3) Without limiting subsections (1) and (2):
- (a) the Secretary's powers under sections 45 and 46 do not extend to requiring a person to give information, or produce documents or copies of documents, if:
 - (i) the information or documents are protected by a privilege or immunity mentioned in those subsections; or
 - (ii) complying with the requirement would involve a breach of a privilege or immunity mentioned in those subsections; and
 - (b) the person need not comply with any purported requirement to that effect.

[parliamentary privilege and legal professional privilege]

- (5) Clause 10, page 6 (lines 13 to 24), omit the definition of *broadcaster*.
[communications activity]

- (6) Clause 10, page 7 (line 6), omit "subsection 13(1)", substitute "section 13".
[communications activity]

- (7) Clause 10, page 7 (lines 7 to 30), omit the definition of *controlled*.
[references to persons controlled by foreign principals]

- (8) Clause 10, page 7 (after line 33), after the definition of *deal*, insert:

designated position holder means:

- (a) a Minister; or
- (b) a member of the Parliament; or
- (c) an Agency Head (within the meaning of the *Public Service Act 1999*); or
- (d) a deputy agency head (however described); or
- (e) the holder of an office established by or under a law of the Commonwealth and equivalent to that of Agency Head or deputy agency head; or
- (f) the holder of an office of the Commonwealth as an Ambassador or High Commissioner, in a country or place outside Australia.

[designated position holder; addition of ambassadors etc.]

- (9) Clause 10, page 8 (lines 5 to 9), omit the definition of *donor activity*, substitute:

disbursement activity: a person undertakes *disbursement activity* 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*.

[donor activity]

(10) Clause 10, page 8 (lines 14 to 21), omit the definition of *foreign business*.

[definition of foreign principal]

(11) Clause 10, page 8 (after line 31), after the definition of *foreign government*, insert:

foreign government related entity means a person, other than an individual, who is related to a foreign principal that is a foreign government or a foreign political organisation in one or more of the following ways:

- (a) if the person is a company—one or more of the following applies:
 - (i) the foreign principal holds more than 15% of the issued share capital of the company;
 - (ii) the foreign principal holds more than 15% of the voting power in the company;
 - (iii) the foreign principal is in a position to appoint at least 20% of the company's board of directors;
 - (iv) the directors (however described) of the company are under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the foreign principal;
 - (v) the foreign principal is in a position to exercise, in any other way, total or substantial control over the company;
- (b) if the person is not a company—either of the following applies:
 - (i) the members of the executive committee (however described) of the person are under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the foreign principal;
 - (ii) the foreign principal is in a position to exercise, in any other way, total or substantial control over the person;
- (c) if the person is a person other than a body politic and the foreign principal is a foreign political organisation:
 - (i) a director, officer or employee of the person, or any part of the person, is required to be a member or part (however described) of that foreign political organisation; and
 - (ii) that requirement is contained in a law, or in the constitution, rules or other governing documents by which the person is constituted or according to which the person operates.

Note: The Secretary may issue a transparency notice under section 14A stating that a person is a foreign government related entity.

foreign government related individual means an individual:

- (a) who is neither an Australian citizen nor a permanent Australian resident; and
- (b) who is related to a foreign principal that is a foreign government, foreign government related entity or foreign political organisation in either or both of the following ways:
 - (i) the individual is under an obligation (whether formal or informal) to act in accordance with the directions, instructions or wishes of the foreign principal;
 - (ii) the foreign principal is in a position to exercise, in any other way, total or substantial control over the individual.

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Note: The Secretary may issue a transparency notice under section 14A stating that a person is a foreign government related individual.

[definition of foreign principal; definitions of foreign government related entity and foreign government related individual; references to persons controlled by foreign principals]

- (12) Clause 10, page 9 (line 3), omit “public enterprise”, substitute “government related entity”.
[foreign government related entity]
- (13) Clause 10, page 9 (lines 5 to 7), omit paragraphs (d) and (e) of the definition of *foreign principal*, substitute:
(d) a foreign government related individual.
[definition of foreign principal]
- (14) Clause 10, page 9 (lines 8 to 10), omit the definition of *foreign public enterprise*, substitute:
former Cabinet Minister, at a particular time, means a person:
(a) who was a member of the Cabinet at any time in the 10 years before the particular time; and
(b) who is not at the particular time a designated position holder.
[foreign government related entity; former Cabinet Minister]
- (15) Clause 10, page 9 (line 31), omit the definition of *periodical*.
[communications activity]
- (16) Clause 10, page 10 (lines 18 to 22), omit the definition of *recent Cabinet Minister*.
[former Cabinet Minister]
- (17) Clause 10, page 10 (after line 22), after the definition of *recent Cabinet Minister*, insert:
recent designated position holder, at a particular time, means a person:
(a) who was a designated position holder at any time in the 7 years before the particular time; and
(b) who is not at the particular time a designated position holder.
[recent designated position holder]
- (18) Clause 10, page 10 (lines 23 to 28), omit the definition of *recent holder of a senior Commonwealth position*.
[recent designated position holder]
- (19) Clause 10, page 10 (line 29) to page 11 (line 2), omit the definition of *recent Minister or member of Parliament*.
[recent designated position holder]
- (20) Clause 10, page 11 (line 22), omit “subsection 51(1)”, substitute “section 51”.
[scheme officials]
- (21) Clause 10, page 11 (lines 24 to 30), omit the definition of *senior Commonwealth position*.
[recent designated position holder]
- (22) Clause 10, page 11 (after line 30), after the definition of *senior Commonwealth position*, insert:

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statutory office-holder means a person who holds any office or appointment under a law of the Commonwealth, or under a law of a State or Territory.

transparency notice: see subsection 14A(1).

[application to statutory office-holders; transparency notice]

- (23) Clause 11, page 12 (line 28), omit “control or”.
[undertaking activity on behalf of a foreign principal: control or direction]
- (24) Clause 11, page 12 (line 28), omit “principal; or”, substitute “principal.”.
[undertaking activity on behalf of foreign principal: funding, supervision or collaboration]
- (25) Clause 11, page 12 (lines 29 and 30), omit paragraphs (1)(e) and (f).
[undertaking activity on behalf of foreign principal: funding, supervision or collaboration]
- (26) Clause 11, page 13 (after line 7), at the end of the clause, add:
- (4) An activity undertaken by a company registered under the *Corporations Act 2001* is not undertaken *on behalf of* a foreign principal merely because the company is a subsidiary (within the meaning of the *Corporations Act 2001*) of a foreign principal.
[undertaking activity on behalf of foreign principal: subsidiary of foreign principal]
- (27) Clause 12, page 13 (lines 10 to 13), omit all the words from and including “a purpose” to and including “the following”, substitute “the sole or primary purpose, or a substantial purpose, of the activity is to influence one or more of the following”.
[political or governmental influence]
- (28) Clause 12, page 13 (lines 22 to 26), omit subclause (2), substitute:
- (2) A person also undertakes an activity for the purposes of *political or governmental influence* if the sole or primary purpose, or a substantial purpose, of the activity is to influence the public, or a section of the public, in relation to a process or proceedings mentioned in subsection (1).
[political or governmental influence]
- (29) Clause 12, page 14 (lines 24 to 27), omit subparagraph (5)(a)(vi), substitute:
(vi) relationships with foreign principals;
[definition of foreign principal; references to persons controlled by foreign principals]
- (30) Clause 12, page 15 (lines 18 to 21), omit subparagraph (6)(a)(iv), substitute:
(iv) relationships with foreign principals;
[definition of foreign principal; references to persons controlled by foreign principals]
- (31) Clause 13, page 15 (line 28), at the end of subclause (1), add “to the public or a section of the public”.
[communications activity]
- (32) Clause 13, page 15 (line 30), omit “materials includes information or materials”, substitute “material includes information or material”.
[technical]

- (33) Clause 13, page 15 (line 32) to page 16 (line 18), omit subclauses (3) to (5), substitute:
- (3) Despite subsection (1), an activity undertaken by a person (the *disseminator*) is not **communications activity** if:
 - (a) the activity is undertaken in the ordinary course of the disseminator’s business; and
 - (b) the activity is communicating or distributing, to the public or a section of the public, information or material:
 - (i) produced entirely by a person other than the disseminator; or
 - (ii) produced by the disseminator only to the extent that the disseminator alters the information or material, without affecting substance, to ensure compliance with the law or to fit time or space constraints; and
 - (c) the identity of:
 - (i) if the producer produced the information or material on behalf of another person—that other person; or
 - (ii) otherwise—the producer of the information or material;is either apparent in the communicating or distributing or is disclosed in accordance with the rules.
 - (4) Despite subsection (1), a carriage service provider (within the meaning of section 87 of the *Telecommunications Act 1997*) does not undertake **communications activity** in relation to information or material merely because the carriage service provider supplies the listed carriage service (within the meaning of section 16 of that Act) used to communicate the information or material.

[communications activity]

- (34) Clause 14, page 16 (lines 27 and 28), omit “and for the purposes of the exemptions in Division 4 of Part 2”.

[scope of exemptions]

- (35) Page 16 (after line 28), at the end of Part 1, add:

Division 3—Transparency notices

14A Issuing transparency notices

- (1) If the Secretary is satisfied that a person is a foreign government related entity or a foreign government related individual, the Secretary may issue a notice (a **transparency notice**) stating that the person is a foreign government related entity or a foreign government related individual (as the case requires).

Note 1: For the effect of a transparency notice, see section 14B.

Note 2: The Secretary’s powers to obtain information or documents under section 46 may assist the Secretary to be satisfied about whether a person is a foreign government related entity or foreign government related individual.

- (2) The transparency notice must be in writing.

Note 1: The Secretary must make copies of transparency notices publicly available (see subsection 43(1A)).

Note 2: A decision to issue a transparency notice is reviewable (see section 14D). For notification of decisions and review rights, see section 27A of the *Administrative Appeals Tribunal Act 1975*.

Procedural fairness

- (3) The Secretary is not required to observe any requirements of procedural fairness in issuing a transparency notice.

When a transparency notice is in force

- (4) A transparency notice comes into force when it is issued and remains in force until it is revoked.

Notice is not a legislative instrument

- (5) A transparency notice is not a legislative instrument.

14B Effect of transparency notice

- (1) For the purposes of this Act:
 - (a) a person stated to be a foreign government related entity in a transparency notice that is in force is taken to be a foreign government related entity; and
 - (b) a person stated to be a foreign government related individual in a transparency notice that is in force is taken to be a foreign government related individual.

Evidentiary effect of notice

- (2) In any proceedings under or arising out of this Act, a transparency notice, or a copy (a **certified copy**) of a transparency notice certified by the Secretary, is prima facie evidence of the matters in the notice.
- (3) A document purporting to be a transparency notice, or a certified copy, must, unless the contrary is established, be taken to be a transparency notice and to have been properly issued.

14C Varying or revoking transparency notices

- (1) The Secretary may vary a transparency notice if the Secretary is satisfied that the details in the notice that identify the person stated to be a foreign government related entity or a foreign government related individual (as the case requires) should be updated or corrected.
- (2) The Secretary must revoke a transparency notice if the Secretary ceases to be satisfied that the person is a foreign government related entity or a foreign government related individual (as the case requires).
- (3) A variation or revocation of a transparency notice must be in writing.

Note 1: The Secretary must make a copy of a variation or revocation of a transparency notice publicly available (see subsection 43(1A)).

Note 2: A decision to vary or revoke a transparency notice is reviewable (see section 14D). For notification of decisions and review rights, see section 27A of the *Administrative Appeals Tribunal Act 1975*.

Procedural fairness

- (4) The Secretary is not required to observe any requirements of procedural fairness in varying or revoking a transparency notice.

Variation or revocation is not a legislative instrument

- (5) A variation or revocation of a transparency notice is not a legislative instrument.

14D Review of decisions relating to transparency notices

Applications may be made to the Administrative Appeals Tribunal for review of the following decisions:

- (a) a decision of the Secretary under subsection 14A(1) to issue a transparency notice;
- (b) a decision of the Secretary under subsection 14C(1) to vary a transparency notice;
- (c) a decision of the Secretary under subsection 14C(2) to revoke a transparency notice.

14E Protection against actions for defamation

- (1) No action for defamation lies against the Commonwealth, a Minister, the Secretary, the Department or another Agency (within the meaning of the *Public Service Act 1999*), or an officer of the Department or another Agency, because the Secretary or an officer takes any of the following actions:

- (a) issues, varies or revokes a transparency notice;
- (b) includes a transparency notice, or any variation or revocation of a transparency notice, on the register;
- (c) makes available a transparency notice, or any variation or revocation of a transparency notice, on a website;
- (d) publishes or otherwise makes available, in any way, a transparency notice, or any variation or revocation of a transparency notice;
- (e) supplies or gives access to a draft transparency notice, or a draft of any variation or revocation of a transparency notice, to a Minister or Agency or any other person.

- (2) Subsection (1) applies even if, in taking the action, there has been a failure to comply with a requirement of this Act or the Administrative Appeals Tribunal Act 1975.

- (3) In this section:

officer of a Department or Agency includes:

- (a) a scheme official; and
- (b) an APS employee in the Department or Agency; and
- (c) a member of the staff of the Department or Agency; and
- (d) a member of the Agency; and
- (e) a person engaged to perform services for the Department or Agency.

[transparency notice]

- (36) Clause 15, page 17 (lines 14 and 15), omit “senior Commonwealth”, substitute “designated”.

[designated position holder]

- (37) Clause 19, page 20 (line 32), omit “recent”, substitute “former”.

[former Cabinet Minister]

- (38) Clause 19, page 20 (lines 33 and 34), omit paragraphs (b) and (c), substitute:

- (b) a recent designated position holder

[recent designated position holder]

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- (39) Clause 21, page 21 (table item 1, column headed “Foreign principal”), omit paragraph (a), substitute:
(a) a foreign government related entity; or
[foreign government related entity]
- (40) Clause 21, page 21 (table item 1, column headed “Foreign principal”), omit paragraphs (c) and (d), substitute:
(c) a foreign government related individual
[definition of foreign principal]
- (41) Clause 21, page 22 (table item 4, column headed “Activity”), omit “Donor activity”, substitute “Disbursement activity”.
[donor activity]
- (42) Clause 21, page 22 (table item 4, column headed “Foreign principal”), omit paragraphs (a), (b) and (c), substitute:
any kind of foreign principal
[definition of foreign principal]
- (43) Heading to clause 22, page 22 (line 4), omit “**recent**”, substitute “**former**”.
[former Cabinet Minister]
- (44) Clause 22, page 22 (line 7), omit “recent”, substitute “former”.
[former Cabinet Minister]
- (45) Clause 22, page 22 (line 8), omit paragraph (b).
[definition of foreign principal]
- (46) Clause 23, page 22 (line 13) to page 23 (line 6), omit the clause, substitute:

23 Registrable activities: recent designated position holders

An activity that a person undertakes on behalf of a foreign principal is *registrable* in relation to the foreign principal if:

- (a) the person is a recent designated position holder; and
- (b) in undertaking the activity, the person contributes experience, knowledge, skills or contacts gained in the person’s former capacity as a designated position holder; and
- (c) the activity is not registrable in relation to the foreign principal under another provision of this Division; and
- (d) the person is not exempt under Division 4 in relation to the activity.

[recent designated position holder]

- (47) Clause 24, page 24 (line 4), omit “solely”, substitute “primarily”.
[scope of exemptions]
- (48) Clause 25, page 24 (lines 6 to 11), omit the clause, substitute:

25 Exemption: legal advice or representation

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if the activity is, or relates primarily to, the provision of:

- (a) legal advice; or
- (b) legal representation in judicial, criminal or civil inquiries, investigations or proceedings; or
- (c) legal representation in relation to an administrative process of a government involving the foreign principal.

[exemption: legal advice; scope of exemptions]

(49) Clause 27, page 25 (lines 7 to 19), omit the clause, substitute:

27 Exemption: religion

A person is exempt in relation to a religious activity the person undertakes, in good faith, on behalf of a foreign principal.

[exemption: religion]

(50) Clause 28, page 25 (line 20) to page 26 (line 2), omit the clause.

[definition of foreign principal: effect on exemption for news media]

(51) Clause 29, page 26 (lines 3 to 29), omit the clause, substitute:

29 Exemption: foreign government employees and commercial or business pursuits

Individual employed by foreign government

- (1) An individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal if:
 - (a) the foreign principal is a foreign government; and
 - (b) the individual undertakes the activity:
 - (i) in the individual's capacity as an officer or employee of the foreign principal; and
 - (ii) in the name of the foreign principal.

Individual employed by foreign government related entity

- (2) An individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal if:
 - (a) the foreign principal is a foreign government related entity; and
 - (b) the activity is a commercial or business pursuit undertaken by the individual in the individual's capacity as a director, officer or employee of the foreign principal.

Person operating under name of foreign government related entity

- (3) A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:
 - (a) the foreign principal is a foreign government related entity; and
 - (b) the activity is a commercial or business pursuit undertaken by the person under the name of the foreign principal or a substantially similar name.

[exemption: foreign government employees etc.]

(52) Page 26 (after line 29), after clause 29, insert:

29A Exemption: industry representative bodies

A person is exempt in relation to an activity the person undertakes on behalf of a foreign principal if:

- (a) the person is an entity formed in Australia, or incorporated under a law of the Commonwealth, a State or a Territory (an *Australian entity*); and
- (b) the person's purpose is to represent the interests of business or a particular sector of business or industry; and
- (c) the person has members who are also Australian entities; and
- (d) the activity is, or relates primarily to, representing the interests of business, or the particular sector, as a whole.

[exemption: industry representative bodies]

(53) Page 26, after proposed clause 29A, insert:

29B Exemption: personal representation in relation to administrative process etc.

An individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal who is also an individual if:

- (a) the individuals either:
 - (i) are members of the same family; or
 - (ii) know each other personally and the individual undertaking the activity does so because of this and in that individual's personal capacity; and
- (b) the activity is, or relates primarily to, representing in good faith the interests of the foreign principal in relation to:
 - (i) an administrative process of a government involving the foreign principal; or
 - (ii) matters affecting the personal welfare of the foreign principal.

[exemption: representative bodies and personal representation in relation to administrative process etc.]

(54) Clause 31, page 28 (line 17), omit "57", substitute "57A".

[consequential to changes to offences against clause 57]

(55) Clause 33, page 30 (line 8), omit "donor activity", substitute "disbursement activity".

[donor activity]

(56) Heading to clause 35, page 32 (line 19), omit "**donor activity**", substitute "**disbursement activity**".

[donor activity]

(57) Clause 35, page 32 (line 24), omit "donor activity", substitute "disbursement activity".

[donor activity]

(58) Clause 35, page 32 (line 26), omit "donor activity", substitute "disbursement activity".

[donor activity]

(59) Clause 35, page 32 (line 31), omit "donor activity", substitute "disbursement activity".

[donor activity]

(60) Clause 37, page 34 (line 32), omit "donor activity", substitute "disbursement activity".

[donor activity]

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- (61) Clause 37, page 34 (line 33), omit “donor activity”, substitute “disbursement activity”.
[donor activity]
- (62) Clause 37, page 35 (line 1), omit “donor activity”, substitute “disbursement activity”.
[donor activity]
- (63) Clause 37, page 35 (line 6), omit “donor activity”, substitute “disbursement activity”.
[donor activity]
- (64) Clause 40, page 38 (line 14), after “or distributed”, insert “to the public or a section of the public”.
[communications activity]
- (65) Clause 42, page 40 (after line 24), before paragraph (3)(a), insert:
(aa) any transparency notices issued under section 14A;
(ab) any revocation or variation of a transparency notice under section 14C;
[transparency notice]
- (66) Clause 43, page 41 (after line 14), after subclause (1), insert:
(1A) The Secretary must also make available to the public, on a website, the following:
(a) a copy of each transparency notice issued under section 14A;
(b) a copy of any variation or revocation of a transparency notice under section 14C.
[transparency notice]
- (67) Clause 43, page 41 (lines 15 to 17), omit “the Secretary may decide not to make particular information available to the public if the Secretary is satisfied that the information”, substitute “the website must not include information that the Secretary is satisfied”.
[publicly available information]
- (68) Clause 45, page 42 (line 7), omit “the foreign”, substitute “a foreign”.
[technical]
- (69) Clause 45, page 42 (line 24), at the end of the note, add “However, the notice does not override certain privileges and immunities (see section 9A).”.
[parliamentary privilege and legal professional privilege]
- (70) Clause 45, page 43 (lines 3 to 5), omit subclause (7), substitute:
(7) The notice must set out:
(a) the effect of section 9A (relationship of this Act to certain privileges and immunities) in relation to the notice; and
(b) the effect of section 60 of this Act and sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).
[parliamentary privilege and legal professional privilege]
- (71) Clause 46, page 43 (line 19), at the end of the note, add “However, the notice does not override certain privileges and immunities (see section 9A).”.
[parliamentary privilege and legal professional privilege]
- (72) Clause 46, page 43 (lines 29 to 31), omit subclause (7), substitute:

(7) The notice must set out:

- (a) the effect of section 9A (relationship of this Act to certain privileges and immunities) in relation to the notice; and
- (b) the effect of section 60 of this Act and sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

[parliamentary privilege and legal professional privilege]

(73) Heading to subclause 51(1), page 46 (line 11), omit the heading.

[scheme officials]

(74) Clause 51, page 46 (line 12), omit “(1)”.

[scheme officials]

(75) Clause 51, page 46 (lines 21 to 28), omit subclauses (2) and (3).

[scheme officials]

(76) Heading to clause 57, page 49 (line 11), omit “maintain”, substitute “renew”.

[restructure of clause 57]

(77) Heading to subclause 57(1), page 49 (lines 12 and 13), omit the heading, substitute:

Intentional omission to apply or renew knowing required to do so, and registrable activity undertaken

[adding knowledge to description of offence against subclause 57(1)]

(78) Clause 57, page 49 (line 17), omit “the foreign”, substitute “a foreign”.

[technical]

(79) Clause 57, page 49 (line 18), omit “relation to the foreign”, substitute “in relation to a foreign”.

[technical]

(80) Clause 57, page 49 (line 24), omit “7”, substitute “5”.

[maximum penalty for offence against subclause 57(1)]

(81) Clause 57, page 49 (line 25) to page 50 (line 14), omit subclause (2), substitute:

Intentional omission to apply or renew reckless as to whether required to do so, and registrable activity undertaken

(2) A person commits an offence if:

- (a) the person is required:
 - (i) to apply for registration under the scheme in relation to a foreign principal by the end of a period; or
 - (ii) to renew the person’s registration in relation to a foreign principal by the end of a period; and
- (b) the person intentionally omits to do so; and
- (c) the person undertakes an activity on behalf of the foreign principal after the end of the period; and
- (d) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 3 years.

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[restructure of clause 57; offence involving recklessness as to requirement to apply or renew]

(82) Heading to subclause 57(3), page 50 (lines 15 and 16), omit the heading, substitute:

Reckless omission to apply or renew knowing required to do so, and registrable activity undertaken

[adding knowledge to description of offence against subclause 57(3)]

(83) Clause 57, page 50 (line 20), omit “the foreign”, substitute “a foreign”.

[technical]

(84) Clause 57, page 50 (lines 21 and 22), omit “the foreign”, substitute “a foreign”.

[technical]

(85) Clause 57, page 50 (line 28), omit “5”, substitute “3”.

[maximum penalty for offence against subclause 57(3)]

(86) Clause 57, page 50 (after line 28), after subclause (3), insert:

Reckless omission to apply or renew reckless as to whether required to do so, and registrable activity undertaken

(3A) A person commits an offence if:

(a) the person is required:

(i) to apply for registration under the scheme in relation to a foreign principal by the end of a period; or

(ii) to renew the person’s registration in relation to a foreign principal by the end of a period; and

(b) the person is reckless as to whether the person has omitted to do so; and

(c) the person undertakes an activity on behalf of the foreign principal after the end of the period; and

(d) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 2 years.

[offence involving recklessness as to requirement to apply or renew]

(87) Heading to subclause 57(4), page 50 (lines 29 and 30), omit the heading, substitute:

Reckless omission to apply or renew knowing required to do so, whether or not registrable activity undertaken

[recklessness as to omission to apply or renew; adding knowledge to description of offence against subclause 57(4)]

(88) Clause 57, page 51 (line 2), omit “the foreign”, substitute “a foreign”.

[technical]

(89) Clause 57, page 51 (line 3), omit “relation to the foreign”, substitute “in relation to a foreign”.

[technical]

(90) Clause 57, page 51 (lines 5 and 6), omit “intentionally omits, or is reckless as to whether the person has omitted,”, substitute “is reckless as to whether the person has omitted”.

[recklessness as to omission to apply or renew]

(91) Clause 57, page 51 (lines 8 to 21), omit subclause (5), substitute:

Absolute liability

- (5) Absolute liability applies to the part of the physical element mentioned in paragraphs (1)(c), (2)(c), (3)(c) and (3A)(c) which requires the activity the person undertakes on behalf of the foreign principal to be undertaken after the end of a period.

[fault element for aspect of physical element of offences against clause 57]

(92) Page 51 (after line 21), after clause 57, insert:

57A Giving notice of end of liability to register while still liable to register

Notice given knowing arrangement still exists, and registrable activity undertaken

- (1) A person commits an offence if:
- (a) the person gives the Secretary a notice under section 31 (notice of end of liability to register) for the person's registration under the scheme in relation to a foreign principal; and
 - (b) at the time the person does so a registrable arrangement exists between the person and the foreign principal; and
 - (c) the person knows that the registrable arrangement will still be in existence on the day specified in the notice under subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease; and
 - (d) the person undertakes an activity on behalf of the foreign principal after that day; and
 - (e) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 5 years.

Notice given reckless as to whether arrangement still exists, and registrable activity undertaken

- (2) A person commits an offence if:
- (a) the person gives the Secretary a notice under section 31 (notice of end of liability to register) for the person's registration under the scheme in relation to a foreign principal; and
 - (b) at the time the person does so a registrable arrangement exists between the person and the foreign principal; and
 - (c) the registrable arrangement will still be in existence on the day specified in the notice under subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease; and
 - (d) the person undertakes an activity on behalf of the foreign principal after that day; and
 - (e) the activity is registrable in relation to the foreign principal.

Penalty: Imprisonment for 3 years.

Notice given knowing arrangement still exists, whether or not registrable activity undertaken

- (3) A person commits an offence if:
- (a) the person gives the Secretary a notice under section 31 (notice of end of liability to register) for the person's registration under the scheme in relation to the foreign principal; and
 - (b) at the time the person does so a registrable arrangement exists between the person and the foreign principal; and
 - (c) the person knows that the registrable arrangement will still be in existence on the day specified in the notice under subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease.

Penalty: Imprisonment for 12 months.

Notice given reckless as to whether arrangement still exists, whether or not registrable activity undertaken

- (4) A person commits an offence if:
- (a) the person gives the Secretary a notice under section 31 (notice of end of liability to register) for the person's registration under the scheme in relation to the foreign principal; and
 - (b) at the time the person does so a registrable arrangement exists between the person and the foreign principal; and
 - (c) the registrable arrangement will still be in existence on the day specified in the notice under subsection 31(3) as the day the person's registration in relation to the foreign principal is to cease.

Penalty: Imprisonment for 6 months.

Absolute liability

- (5) Absolute liability applies to the part of the physical element mentioned in paragraphs (1)(d) and (2)(d) which requires the activity the person undertakes on behalf of the foreign principal to be undertaken after a day.

[restructure of clause 57; adding knowledge to description of offences; offences involving recklessness as to ongoing existence of registrable arrangement; fault element for aspect of physical element of offences against clause 57A]

- (93) Clause 59, page 52 (before line 23), before the penalty, insert:

Note: A notice given under section 45 or 46 does not override certain privileges and immunities (see section 9A).

[parliamentary privilege and legal professional privilege]

- (94) Clause 60, page 53 (line 16), omit "5", substitute "3".

[maximum penalty for offence against clause 60]

- (95) Clause 61, page 55 (line 1), omit "3", substitute "2".

[maximum penalty for offence against clause 61]

- (96) Page 55 (after line 2), at the end of Part 5, add:

61A Geographical jurisdiction of offences

- (1) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against this Part if the defendant is, or was at the time of the conduct constituting the offence, a former Cabinet Minister or a recent designated position holder.
- (2) Section 14.1 of the *Criminal Code* (standard geographical jurisdiction) applies to any other offence against this Part.

[geographical jurisdiction]

- (97) Clause 67, page 58 (line 2), omit “The”, substitute “Subject to subsections (1A) and (1B), the”.

[delegations]

- (98) Clause 67, page 58 (after line 9), after subclause 67(1), insert:

- (1A) The Secretary must not delegate the Secretary’s functions or powers under any of the following provisions:
 - (a) section 14A (issuing transparency notices);
 - (b) section 14C (varying or revoking transparency notices).
- (1B) The Secretary must not delegate the Secretary’s functions or powers under any of the following provisions to a person mentioned in paragraph (1)(b):
 - (a) section 45 (notice requiring information to satisfy Secretary whether person is liable to register under the scheme);
 - (b) section 46 (notice requiring information relevant to scheme);
 - (c) subsection 53(1) (authorisation for Secretary to communicate scheme information).

[delegations]