# Legal Interpretation: Letter Of Advice Assessment

Dear Chris, Re: Registration Issues

## Executive Summary

I can confirm your directions to offer you advice on your options in ceasing your registration and consequences that may apply to you if you fail to take proper precautions in this process, under sections 15 and 57A of the Foreign Transfer Transparency Scheme Act 2018 (Cth) [1]. [1: Foreign Transfer Transparency Scheme Act 2018 (Cth) s15 and 57A.]

Chris Cheeseworthy at this time you were self-employed as a political lobbyist for the cheese industry until recently. You have just ceased operation of your business and ceased all of your business relationships inclusive of the one you held with an Australian and New Zealand cheese marketing organization. You recently represented this organization whilst lobbying Australian political parties ('to include more cheese-friendly economic policies') and consequently, registered under the Foreign Influence Transparency Scheme Act 2018 (Cth) in January.

Therefore, the question is what liabilities and responsibilities do you hold under the Foreign Influence Transparency Scheme Act 2018 (Cth)?

## Issues

The first issue we will need to establish in this scenario is the specific meaning of 'registrable activities' in reference to lobbying Australian political parties.

'Registrable activities' under section 1 of the Foreign Influence Transparency Scheme Act 2018 (Cth) is 'An activity that a person undertakes on behalf of a foreign principal is registrable in relation to the foreign principal if: (a) General political lobbying in Australia and (b) for the purpose of political or governmental influence' [2]. [2: Ibid s21 (a).]

The next issue we must identify is what responsibilities and liabilities you hold under the Foreign Influence Transparency Scheme Act 2018 (Cth). As you wish to cease registration with Australian political lobbying, I must inform this can be a challenging task. According to section (15) 'In most cases, the person continues to be liable to register in relation to a foreign principal until the person notifies the Secretary otherwise and ceases to have an arrangement with the foreign principal' and 'Registration usually ends if the person notifies the Secretary that the person has ceased to be liable or if the person fails to annually renew the registration [3]. Therefore, in order for you to cease registration, it is likely that you will be required to inform the secretary that you wish to deregister. Additionally, if you fail to renew your annual registration severe penalties may apply. [3: Ibid s15.]

Penalties that may apply under the Foreign Influence Transparency Scheme Act 2018 (Cth) can be found in-depth under section (57A) [4]. Common offenses regarding registration include failure to apply for registration initially or renew registration annually (incurs a penalty of up to 5

years imprisonment), providing misleading documents to a secretary regarding an information notice (up to 3 years imprisonment), destroying any documents relevant to registration found under section (40) of this Act (imprisonment of up to 2 years), and finally demonstrating an inability to comply with a transparency notice (imprisonment up to 6 months). [4: Ibid s57(a).]

## Exemptions

Despite there being a significant amount of penalties that may be incurred concerning registration, there is also a considerable amount of exemptions that may apply to your circumstances. Sections (24-30) of the Foreign Influence Transparency Scheme Act 2018 (Cth) include different exemptions that may apply to you if you face any of these conditions. You stated that you represented an Australian and New Zealand cheese marketing organization whilst lobbying with Australian political parties. New Zealand may be classified as a ‘foreign principal’ which under section (10) (c) means ‘a foreign political organization’ [5]. [5: Ibid s5(c).]

Despite having terminated your business relationships and operation with this company you are still registered with this company legally under this Act as of the first of January this year. However, an exemption that may apply to you found under section 29 (1) (b) (i) and (ii) is ‘An individual is exempt in relation to an activity the individual undertakes on behalf of a foreign principal if they are an employee of the foreign principal and in the name of the foreign principal' [6]. [6: Ibid s29 (1) (b) (i) (ii).]

## Statutory Interpretation

Chris, courts often use Statutory interpretation which is a process where courts continuously interpret and apply relevant legislation. Interpreting legislation can often be a challenging task as it can frequently be the subject of appeals. Therefore, this process is often referred to as 'an art, not a science'[footnoteRef:7]. [7: Michael Kirby, ‘Statutory Interpretation: The Meaning of Meaning’ (2011) 35 Melbourne University Law Review 113 at 132.]

Courts have several methods they use to assist in the meaning of legislation and include:

- The Literal Rule- ‘The literal rule was the cornerstone of the common law approach to statutory interpretation, giving effect quite literally to the words Parliament has used’[footnoteRef:8]. [8: Michelle Sanson, Statutory Interpretation (Oxford, 2nd ed, 2016) 209.]
- The Golden Rule- If accurate interpretation created illogical results courts can adjust the original meaning of words.
- The Mischief Rule- ‘The mischief rule was based on the idea that statutes were to be interpreted by determining the purpose of Parliament in passing the legislation, and adopting an interpretation of the words of the statute that is consistent with that purpose’[footnoteRef:9]. [9: Ibid 211.]

Statutory interpretation requires a two-step process which includes identifying if there is any ambiguity or absurdity in legislative delivery and then resolving this ambiguity or absurdity. Sometimes if courts interpret legislation it can lead to a change in precedent and change in the meaning of statutes and legislative delivery. Common law and legislation often have a dynamic

connection however, the statute is always able to overrule common law.

## Interpretive Techniques

To determine the meaning of a statutory provision is often referred to as construction as opposed to interpretation. Australia's High Court states this discrepancy in accordance with Collector of Customs v Agfa-Gevaert Ptd Ltd 'With respect this distinction seems artificial, if not illusory' [10]. [10: 'COLLECTOR OF CUSTOMS v AGFA-GEVAERT LIMITED, High Court of Australia, 10 December 1996', Wolters Kluwer (Web Page) .]

Words can be flexible. In your situation courts can limit interpretation to reach a decision, therefore; words may become narrower or broader.

## Reading Down

Courts use this approach when limiting the meaning of a word. It involves giving words specific legal meaning as opposed to applying the original meaning to give an interpretation that reflects the purpose of the legislation. Commissioner of Taxation v Warner 2015 illustrated a perfect example of reading down. 'Reading down the words "person" and "you" in s 264 and s 353-10 respectively to exclude a liquidator' [11]. [11: 'FC of T v WARNER & ORS, Federal Court of Australia, 01 July 2015', Wolters Kluwer (Webpage).]

## Straining

In this process, courts constrain or stretch the original meaning of words to a certain parameter. 'Giving a statutory text a 'strained construction' means applying a meaning which is different to the ordinary meaning, but consistent with the statutory purpose'[footnoteRef:12]. [12: Michelle Sanson, Statutory Interpretation (Oxford, 2nd ed, 2016) 104.]

### Reading In

This process involves adding words into a provision to make it consistent with its statutory purpose.

### Reading Up

This comprises of adding words to a provision to lengthen its process to become consistent with its statutory purpose.

### Ambulatory/ Dynamic Interpretation

This involves giving words their existing meaning as opposed to giving the words its original meaning at the time the statute was passed.

### Purposive Approach

According to the contextual factors surrounding your case, it appears that no examples

regarding ambiguity or absurdity. Usually if courts find any examples of ambiguity or absurdity in your case, they will apply a two-step procedure known as the purposive approach, where the purpose is considered in both steps. The first step would be to identify any ambiguity or absurdity. To do so courts may use the literal rule as mentioned above, where they will focus on any ordinary meanings of a provision in a setting of the statute as a whole. However, if they declare no ambiguity existed from the text alone, they will ask if it arose from the purpose of the Act. The second step is then to resolve these ambiguities or absurdities. To do this courts will choose the best method that enhances the purpose of the Act and gives an outcome to the intention of parliament. (The purposive approach integrates the mischief and golden rule in this instance).

Courts also have the power to reference extrinsic materials to decide the purpose, if courts decide it is deemed necessary to assist in deciding the meaning of a provision. As stated in Pepper v Hart 1992 Courts are ‘prepared to look at much extraneous material that bears upon the background against which the legislation was enacted’ [13]. They may also use legislation such as the Acts Interpretation Act 1901 (Cth) s 15AB(1)(2) [14] or the Interpretation of Legislation Act 1984 (Vic) s 35(b) [15]. [13: Pepper v Hart [1993] AC 593.] [14: Acts Interpretation Act 1901 (Cth) s 15AB(1)(2).] [15: Interpretation of Legislation Act 1984 (Vic) s 35(b).]

Extrinsic materials are fundamentals of legislation that do not assist in the formation of an Act or other documents which enlighten the operation of legislation. Courts will also use these materials if they deem it necessary to determine a purpose or legislative intentions. The most common types of extrinsic materials to be used include:

- The Second Reading Speech- where a parliamentarian deliberates the purpose of future legislation
- The Explanatory Memorandum- a document used in parliament that records the aim of every section in planned legislation.

Extrinsic materials are not limited to these they can use practically anything as long as they can demonstrate what Parliaments' intentions were when passing the legislation. Other forms of extrinsic materials include law reform Commission reports, Parliamentary debates, Parliamentary Committee reports, international treaties and agreements, past legislation, dictionaries, and case law.

## Conclusion

You were registered under the Foreign Influence Transparency Scheme Act 2018 (Cth), partaking in general political lobbying for Australia and New Zealand as of January this year. You will continue to be liable to register under the foreign principal until the secretary is informed otherwise, where you will cease activities with this principal. If you fail to renew your registration or take inaction on this matter you may face a severe penalty such as imprisonment. In addition to this, sections 24-30 of the Foreign Influence Transparency Scheme Act 2018 (Cth) includes a list of detailed exemptions that may apply to your circumstances. Your case likely presents no clear signs of ambiguity or absurdity; however, courts may use the purposive approach, interpretive techniques and statutory interpretation to confirm these implications.

# Bibliography


## A Books

1. Sanson, Michelle, Statutory Interpretation (Oxford, 2nd ed, 2016)

## B Case Law

1. Pepper v Hart [1993] AC 593

## C Legislation

1. Acts Interpretation Act 1901 (Cth)
2. Interpretation of Legislation Act 1984 (Vic)
3. Foreign Transfer Transparency Scheme Act 2018 (Cth)

## E Other

1. ‘COLLECTOR OF CUSTOMS v AGFA-GEVAERT LIMITED, High Court of Australia, 10 December 1996’, Wolters Kluwer (Web Page)
2. Kirby, Michael, ‘Statutory Interpretation: The Meaning of Meaning’ (2011) 35 Melbourne University Law Review 113
3. ‘FC of T v WARNER & ORS, Federal Court of Australia, 01 July 2015’, Wolters Kluwer (Webpage)