



## HIGH COURT OF AUSTRALIA

16 June 2021

LIBERTYWORKS INC v COMMONWEALTH OF AUSTRALIA  
[2021] HCA 18

Today, the High Court answered questions stated in a special case concerning whether the *Foreign Influence Transparency Scheme Act 2018* (Cth) ("the Act") is invalid, to the extent it imposes registration obligations with respect to communications activities, on the ground that it infringes the freedom of political communication implied by the *Constitution* ("the implied freedom").

The plaintiff, LibertyWorks Inc, is a private think-tank with 1,290 members in Australia. The American Conservative Union ("the ACU") is a corporation in the United States of America which holds an annual political conference called the "Conservative Political Action Conference" ("CPAC"). In 2018, the President of the plaintiff met with the Executive Director of the ACU and it was agreed that the plaintiff and the ACU would collaborate in a CPAC event to be held in Australia in 2019. In August 2019, the plaintiff was asked by the Attorney-General's Department to consider whether it was required to register its arrangements with the ACU under the Act. The plaintiff has not to date registered under the Act.

The Act's stated object is to provide a scheme for the registration of persons who undertake certain activities on behalf of foreign principals in order to improve the transparency of their activities on behalf of those foreign principals. The Act relevantly requires a person to register details about themselves and their foreign principal with the Secretary of the Attorney-General's Department ("the Secretary") where the person undertakes communications activity on behalf of the foreign principal for the purpose of political or governmental influence. A person undertakes communications activity if they communicate or distribute information or material to the Australian public or a section of it. The parties agreed in the special case that, subject to the question of validity, the plaintiff had registration obligations under the Act because it undertakes communications activity, in the form of holding annual CPAC events, on behalf of the ACU, a foreign principal for the purposes of the Act.

The High Court, by majority, answered the primary question stated for its opinion to the effect that the provisions of the Act respecting communications activity by a person who acts on behalf of a foreign principal were not invalid on the ground that they infringed the implied freedom. A majority of the Court found that the Act, in its requirement of registration where communications activity is undertaken on behalf of a foreign principal, burdened the implied freedom but held that the burden was justified. The provisions were held to have a legitimate purpose, namely to achieve transparency as a means of preventing or minimising the risk that foreign principals will exert influence on the integrity of Australia's political or electoral processes. The provisions were proportionate to the achievement of that purpose. The majority concluded that other questions, concerning the extent of the Secretary's power to require information from a person prior to or after registration, did not arise for the opinion of the Court in the absence of a case advanced against the validity of the Act on that basis.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*